



City of Seattle

Paul Schell, Mayor

Seattle City Light

Gary Zarker, Superintendent



November 7, 2001

Gary Engman
Washington Department of Fish and Wildlife
16018 Mill Creek Blvd.
Mill Creek, Washington 98102

Dear Gary:

Skagit Steelhead Smolt Production Program - O&M Funding Approval

This letter confirms that on June 4, 2001 the Skagit Non-Flow Plan Coordinating Committee (NCC) voted unanimously to fund Washington Department of Fish and Wildlife (WDFW) for four years of Operation and Maintenance (O&M) at the Marblemount Hatchery for the production of steelhead smolt. This funding is part of the Steelhead Smolt Production Program (Section 7.3.2 of the Skagit Fisheries Settlement Agreement [SA]) as modified by the co-program managers in a letter dated May 29, 2001 (see attached letter). This O&M funding is subject to the conditions approved by the NCC and set forth in this letter.

For a minimum of 4 years, operation and maintenance of Marblemount Hatchery steelhead programs will be supported by the SA Steelhead Smolt Production Program Operation and Maintenance budget at the rate of \$143,321 (2000 dollars) per year. Remaining and unused Operation and Maintenance funds will stay in the Steelhead Smolt Production Program for future consideration. Continued funding of hatchery operation and maintenance beyond this initial term and/or funding of other salmonid related programs will be subject to review and approval of the Skagit Settlement Agreement Non-Flow Plan Coordinating Committee.

Funding implementation must be consistent with the June 6, 1996 Memorandum of Understanding (MOU) between the City of Seattle, City Light Department and the Washington State Department of Fish and Wildlife. This MOU provides the administrative details needed for the implementation of portions of the Skagit River Project Fisheries and Wildlife Settlement Agreements.

The City's FERC license (dated May 16, 1995) authorized the implementation of the Skagit Fisheries Settlement Agreement. The license also created the Skagit Non-Flow Plan Coordinating Committee of which WDFW is a voting member. The NCC is responsible for



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Steelhead Smolt Production Program

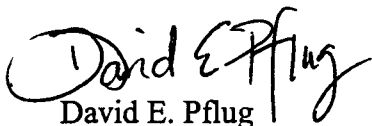
11/7/2001

Page 2

implementation of several Non-Flow related fisheries programs. One such program is the "Steelhead Smolt Production Program." WDFW and Skagit System Cooperative are the designated co-program managers for this particular program. You were appointed to be WDFW's Program Manager representative.

If you or anyone else from your organization has questions regarding this matter, I can be contacted at (206) 386-4574.

Sincerely,

A handwritten signature in black ink, appearing to read "David E. Pflug". The signature is stylized with a large, looped "D" and a cursive "Pflug".

David E. Pflug
Senior Fisheries Biologist
Natural Resources and Environmental Planning

DP:jm
enclosures

cc: Skagit Non-Flow Coordinating Committee
Ron Warren, WDFW (Mill Creek)



STATE OF WASHINGTON
DEPARTMENT OF FISH AND WILDLIFE

16018 Mill Creek Boulevard • Mill Creek, Washington 98012 • (425) 775-1311 FAX (425) 338-1066

May 29, 2001

Doreen Maloney, Chairperson
Skagit System Cooperative
P. O. Box 368
LaConner, Washington 98257

Re: Agreement Between Skagit System Cooperative and Washington Department of Fish and Wildlife in Regard to Skagit River Hydroelectric Project Fisheries Settlement Agreement, Steelhead Production Program Funds

Dear Ms. Maloney:

The Skagit River Hydroelectric Project Fisheries Settlement Agreement (SA), and specifically the Anadromous and Resident Fish Non-Flow Plan portion of that agreement provided for the implementation of measures specifically designed to mitigate impacts not fully offset by other provisions of the agreement. In the specific case of steelhead, the SA provided a total of \$2,700,000 (1990 dollars) to design, construct and operate facilities that would produce steelhead smolts. Adjusting for inflation through the year 2000, total funds available for Engineering and Capitol Improvements/Construction (\$1,993,575) and Operation and Maintenance (\$1,783,725) amount to about \$3,777,300.

The Swinomish Tribal Community, Upper Skagit Indian Tribe, and Sauk-Suiattle Indian Tribe, represented by their fisheries management agency, the Skagit System Cooperative (SSC), and Washington Department of Fish and Wildlife (WDFW) desire to modify the Steelhead Smolt Production Program portion of the SA. As stipulated and required by the SA, these changes are subject to the approval of the Skagit Settlement Agreement Non-Flow Plan Coordinating Committee and notification of the Federal Energy Regulatory Commission.

Principles of agreement between SSC and WDFW are as follows:

1. To implement needed efficiency and capacity improvements for steelhead, chinook salmon and resident trout, Marblemount Hatchery will be modified and upgraded as described in the August 1, 2000 Seattle City Light Skagit Steelhead Smolt Production Program funding approval letter. Cost of these capitol improvements is estimated to be \$418,389* (1999 dollars). These improvements are underway and are expected to be completed in 2001. Funding source for this activity is the SA Steelhead Smolt Production Program Engineering and Capitol Improvements/Construction budget.

Doreen Maloney
May 29, 2001
Page 2

2. After deducting costs for the Marblemount Hatchery upgrade, remaining SA Steelhead Smolt Production Program Engineering and Capitol Improvements/Construction funds shall be shifted to the Chinook Research Program (7.3.3) for projects related to chinook and other salmonids as approved by the Skagit Settlement Agreement Non-Flow Plan Coordinating Committee.
3. For a minimum of 4 years, operation and maintenance of Marblemount Hatchery steelhead programs will be supported by the SA Steelhead Smolt Production Program Operation and Maintenance budget at the rate of \$143,321 (2000 dollars) per year. Remaining Operation and Maintenance funds will stay in the Steelhead Smolt Production Program (7.3.2) for future consideration. Continued funding of hatchery operation and maintenance beyond this initial term and/or funding of other salmonid related programs will be subject to review and approval by the Skagit Settlement Agreement Non-Flow Plan Coordinating Committee.
4. In the meantime, WDFW will search for other sources of funding for operations and maintenance during this initial 4-year term. If funding is secured, any unspent operation and maintenance funds may then be available for other steelhead programs.

Sincerely,



Bob Everitt
Regional Director

cc: Lorraine Loomis
Scott Schuyler
Lawrence Joseph
NCC
Seattle City Light (Dave Pflug)

* Or as subsequently modified pursuant to issues identified at the October 18, 2000 Non-Flow Plan Coordinating Committee meeting.



City of Seattle

Paul Schell, Mayor

Seattle City Light

Gary Zarker, Superintendent

Jeff
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AUG - 4 2000

HABITAT PROGRAM

cc: *Law*
Gary H.

mich



OFFICE OF THE DIRECTOR

AUG 03 2000

Project No. 553 – Washington
Skagit River Hydroelectric Project
Seattle City Light
Article 416

July 31, 2000

David Boergers, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Dear Mr. Boergers:

Skagit Hydroelectric Project No. 553
Project Lands (License Article 416) – Federal land occupied and mitigation lands purchased

This letter is intended to address outstanding issues related to federal lands occupied by the Skagit project and mitigation lands purchased under the new license. We have enclosed an original and eight copies of this submittal.

Project Acreage

Because conflicting figures have been used over time, SCL conducted a thorough review of its records to determine the total project acreage occupying federal property. We feel confident in our conclusion that the project occupies 19,268.68 acres. Of this total, 214.92 acres are used for transmission line right-of-way and 19,053.76 acres are used for non-transmission line right-of-way. A spreadsheet is enclosed that provides a breakdown of the total acreage; entries on the spreadsheet correspond to individual parcels as represented in Exhibit K.

To clarify an issue cited in SCL's letter to FERC dated September 24, 1996, there is an error on sheet T-45B of Exhibit K. Rather than the 20.07 acres shown for the small parcel in the drawing, our surveyor has determined that the actual size of this parcel is 2.71 acres. This revised number is accounted for in the 19,268.68 acre total.

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In response to FERC's request in the letter to Ronald Bates dated March 31, 2000, we have also enclosed a copy of the December 1978 revised breakdown of project lands (Exhibit F). You will note that this document cites the total project acreage as 19,266.6 acres. We are uncertain why this number differs from our current total; however, we have a high level of confidence in our computation of 19,268.68 acres and, if FERC agrees, we will use this figure for all project-related matters.

Project Islands

Wildlife mitigation lands - Per Article 410, the Wildlife Settlement Agreement directs SCL to purchase wildlife mitigation lands. To date, a total of 8,129 acres have been purchased. All of this land was purchased from private landowners and is owned by SCL; none of the wildlife mitigation lands occupy federal property. A spreadsheet is enclosed that lists the individual parcels acquired. As additional parcels are acquired, SCL will update FERC on the revised totals as part of its Article 410 reporting requirement.

Off-site project islands for recreation - In SCL's letter to FERC dated September 24, 1996, we explained that off-site project recreation lands are to be owned and administered by the U.S. Forest Service (USFS). SCL has no acquisition or ownership role/interest in these properties. SCL is simply providing funds to the USFS for recreation development at these sites and, in many cases, other parties besides SCL are also contributing funds. Further, boundaries for the recreation developments are not always clearly delineated, making it difficult to assess actual acreage amounts. For these reasons, we do not believe these projects should be considered project lands, nor should they be reported under Article 416. Instead, SCL proposes to continue providing updates on the status of these projects under the Article 412 and 415 reporting requirements.

Lands purchased for tribes - All properties acquired as mitigation for impacts to traditional cultural properties have been transferred to the respective tribes and are no longer in SCL's ownership. Acquisition and transfer of these lands has been reported to FERC under Article 415 reporting requirements.

Exhibits J and K

SCL's Engineering Division is in the process of revising Exhibits J and K to include wildlife mitigation lands purchased after 1996. We plan to submit these revised drawings to FERC by August 31, 2000.

David Boergers
License Article 416 July 31, 2000
Page 3

I hope the foregoing information addresses FERC's questions related to project acreages. Please feel free to contact Michele Lynn at 206-386-4578 if you require additional information.

Sincerely,



Jan Mulder, Manager
Natural Resources and Environmental Planning
Environment and Safety Division

ML:jom
enclosures

cc: see attached list

David Boergers
License Article 416 July 31, 2000
Page 4

cc: w/enclosures

Fred Springer, FERC
Mohamad Fayyad, FERC
Harry Hall, FERC
William Paleck, NPS
Margie Allen, NPS
Bruce Freet, NPS
Dave Frederick, USFWS
Fred Seavey, USFWS
Bernie Burnham, BIA
Chuck James, BIA
John Phipps, USFS
Jim Chu, USFS
Jim Archambeault, USFS
Jim Jacobson, USFS
William Stelle, Jr., NMFS
Steve Fransen, NMFS
Marilyn Scott, Upper Skagit Tribe
Doreen Maloney, Upper Skagit Tribe
Jason Joseph, Sauk-Suiattle Tribe
Norma Joseph, Sauk-Suiattle Tribe
Brian Cladoosby, Swinomish Indian Tribal Community
Lorraine Loomis, Swinomish Indian Tribal Community
Stan Walsh, Skagit System Cooperative
Bob Pasco, Nlaka'pamux Nation
✓ Jeffrey P. Koenings, WDFW
Gary Engman, WDFW
Gary Sprague, WDFW
Dave Fluharty, North Cascades Conservation Council
Patrick Goldsworthy, North Cascades Conservation Council
Fayette Krause, The Nature Conservancy
Saul Weisberg, North Cascades Institute

Wildlife Mitigation Lands

#	Parcel name	Location	Acreage
1	Illabot Creek	Portion of Sec. 2, 3, T34N, R10E Portion of Sec. 34, 35 T35N R10E	693
2	South Fork Nooksack River	Portion of Sec. 12, 13, 14, 15, 22, 23, 24 T36N, R6E Portion of Sec. 2, 8, 9, 10, 11, 15, 16, 17, 18, 20, 21 T36N, R7E	3,991
3	Barnaby and Lucas Sloughs	Portion of Sec. 35, 36 T35N, R9E Portion of Sec. 29, 31, 32 T35N R10E	485
4	Bacon Creek	Portion of Sec. 21, T36N, R11E	120
	Skagit River drainage		
5	"Skagit block"	Portion of Sec. 22, 23, 26, 27 T35N, R10E	688
6	"Gilbertson parcel"	Portion of Sec. 26, T35N, R10E	5
7	"Aloha parcel"	Portion of Sec. 23, 25, 26, 34, 35, T35N, R10E	1,700
8	"Bestland parcel"	Portion of Sec. 26, T35N, R10E	35
9	"Myszkowski parcel"	Portion of Sec. 22, T35N, R10E	17
10	"McLeod Slough"	Portion of Sec. 33, 34, T35N, R9E	150
	Sauk River drainage		
11	"Dan Creek"	Portion of Sec. 5, T32N, R10E	162
12	"Hudson parcel"	Portion of Sec. 32, T33N, R10E	45
13	"Weimer parcel"	Portion of Sec. 8, T32N, R10E	38
	Total acreage		8,129 acres

Federal Lands Occupied by FERC Project #553

#	Description	Sec. Twp. Rge.	R/W acreage	Non R/W acreage	Exhibit K Sheet #
1	Ptn. NW NE	Sec 12 T35N R10E	0.98		T-41A
2	Ptn. NW SW	Sec 29 T36N R11E	0.84		T-42A
3	Ptn. Gov. Lot 3	Sec 20 T36N R11E	11.78		T-42A
4	Ptn. SW NE	Sec 21 T36N R11E	0.02		T-43A
5	Ptn. NE NE	Sec 21 T36N R11E	2.20		T-43A
6	Ptn. NW SW, Gov. Lot 7	Sec 15 T36N R11E	13.50		T-43B
7	Ptn. Gov. Lot 2	Sec 15 T36N R11E	13.12		T-43B
8	Ptn. Gov. Lot 3	Sec 15 T36N R11E	0.08		T-43B
9	SE SW	Sec 10 T36N R11E	Area included in Entry #7		T-43B
10	Ptn. SE NE	Sec 10 T36N R11E	2.66		T-44A
11	Ptn. SW SE, NE SE, Lot 1	Sec 2 T36N R11E	27.46		T-44B
12	Ptn. Gov. Lot 12, 14, 15	Sec 1 T36N R11E	20.28		T-45A
13	Ptn. Gov. Lot 1, 2, E SW, SW NE	Sec 36 T37N R11E	40.50		T-45A
14	Ptn. Gov. Lot 1, 2, SE SW	Sec 36 T37N R11E	16.13		T-45A
15	Ptn. S NE, NE NE	Sec 36 T37N R11E	Area included in Entries #13 and #14		T-45B
16	Ptn. Gov. Lot 7	Sec 30 T37N R12E	2.71		T-45B
17	Ptn. Gov. Lot 5	Sec 30 T37N R12E	6.50		T-45B
18	Ptn. Gov. Lot 2, 3	Sec 20 T37N R12E	47.90		T-46A
19	Ptn. Gov. Lot 2, 3	Sec 29 T37N R12E	Area included in Entry #18		T-46A
20	Ptn. Gov. Lot 3, NE NE, SW NE	Sec 30 T37N R12E	Area included in Entry #18		T-46A
21	Ptn. Gov. Lot 2	Sec 20 T37N R12E	6.90		T-46A
22	Newhalem	Sec 20 T37N R12E		9.61	101
23	Newhalem	Sec 21 T37N R12E	1.36		101

#	Description	Sec. Twp. Rge.	R/W acreage	Non R/W acreage	Exhibit K Sheet #
24	Newhalem	Sec 21 T37N R12E		16.47	101
25	Newhalem	Sec 21 T37N R12E		13.68	101
26		T37N R12E		Area included in Entry #34 - see note on Sheet #101	102-109
27		T37N R13E		Area included in Entry #34 - see note on Sheet #101	102-109
28		T37N R14E		Area included in Entry #34 - see note on Sheet #101	102-109
29		T38N R13E		Area included in Entry #34 - see note on Sheet #101	102-109
30		T38N R14E		Area included in Entry #34 - see note on Sheet #101	102-109
31		T39N R13E		Area included in Entry #34 - see note on Sheet #101	102-109
32		T39N R14E		Area included in Entry #34 - see note on Sheet #101	102-109
33		T40N R13E		Area included in Entry #34 - see note on Sheet #101	102-109
34		T41N R13E		19,014.00	102-109
	Sub-total		214.92	19,053.76	
	Total acreage on federal land			19,268.68	

**FIRST AMENDMENT
TO THE 1996
MEMORANDUM OF UNDERSTANDING**

**between
The City of Seattle, City Light Department
and
The Washington State Department of Fish and Wildlife**

**PROVIDING FOR ADMINISTRATIVE DETAILS IN THE
IMPLEMENTATION OF PORTIONS OF THE SKAGIT RIVER PROJECT
FISHERIES AND WILDLIFE SETTLEMENT AGREEMENTS**

This FIRST AMENDMENT TO THE 1996 MEMORANDUM OF UNDERSTANDING is made and entered into by and between the City of Seattle, City Light Department ("City") and the Washington Department of Fish and Wildlife ("WDFW"), an executive agency of the State of Washington. The City and the WDFW are hereinafter referred to jointly in this agreement as the "Parties".

RECITALS

WHEREAS, the City and WDFW negotiated the 1996 Memorandum Of Understanding (MOU) to implement the Fisheries Settlement Agreement ("Fisheries Agreement"); and

WHEREAS, the City signed the MOU on April 26, 1996; and

WHEREAS, the WDFW signed the MOU on June 5, 1996; and

WHEREAS, the WDFW and the City have agreed to cooperate on a variety of projects pursuant to the Fisheries Agreement which is part of the license issued by the Federal Energy Regulatory Commission (FERC) to the City on May 16, 1995, for continued operation of the City's hydroelectric project on the Skagit River (FERC Project No. 553); and

WHEREAS, the monitoring activities described in this amendment were contemplated in the original MOU but were not sufficiently clarified; and

NOW, THEREFORE, in consideration of the above premises, the Parties agree as follows:

NOW, THEREFORE, the Parties hereto agree to this first amendment to the MOU which replaces Section 1(A) and Exhibit B of the original MOU as follows (the new language is double underlined):

Section 1. Project Schedule and Funding

A. **Planned Schedule and Funding**: The WDFW shall make its best effort to implement the fisheries and wildlife projects (collectively, "projects," individually, the "fisheries projects" or the "wildlife projects") to be performed in accordance with the Settlement Agreements and the schedules set forth herein.

The "license years" in the attached schedules are based on a license issuance date of May 16, 1995. Actual implementation of the Settlement Agreements, however, is dependent on FERC's approval of project implementation plans (FERC required that the City submit project implementation plans and that the FERC approve them before the City can proceed with implementation of the Settlement Agreements). The request from FERC for the implementation plans has delayed commencement of license year one projects in the first license year.

For the administrative purposes of funding and project implementation, the Parties agree to define the "billing year" by shifting the license year to the nearest mutually agreeable billing quarter (January 1 - March 31, April 1 - June 30, July 1 - September 30, or October 1 - December 31). Within 60 days of approval from the FERC of the project implementation plans, license issuance, the Parties shall complete Exhibit A of this agreement in order to document the mutually agreed upon billing year. Funds or work assigned to a specific license year in the Settlement Agreements shall, subsequently, be tied to the billing year as defined in Exhibit A.

Payments to the WDFW shall be based on the billing year for all years. Any payments due, thereafter, for any annual license(s) shall be determined at a later date.

All funding amounts identified in the Settlement Agreements are 1990 dollars, indexed for inflation as described in Section 3 of this MOU.

Fisheries Agreement

Exhibit B identifies the Anadromous Fish Flow Plan (Flow Plan) and Anadromous And Resident Fish Non-Flow Plan (Non-Flow Plan) fisheries projects and work activities to be undertaken by the WDFW. The schedule and funding for the Non-Flow Plan projects are outlined in Exhibit C. The projects or work activities described in the Flow Plan shall be done by WDFW, at the Cities' option, if the parties reach agreement on work plans and funding levels.

As described in Section 7.3.1.2 of the Fisheries Agreement, the Non-Flow Plan Coordinating Committee (NCC) can delay the implementation schedule of any program described in this Memorandum of Understanding without losing the dollars allocated for that program. Cost schedules cannot be advanced without City approval. Dollars not spent on a specific plan or within a scheduled period may be transferable according to guidelines described in Section 7.3.1.2 of the Fisheries Agreement and subject to NCC approval.


Wildlife Agreement

Exhibit D identifies the wildlife projects to be undertaken by the WDFW, with the schedule and funding outlined in Exhibit E.

ALL OTHER PROVISIONS OF THE ORIGINAL MEMORANDUM OF UNDERSTANDING SHALL REMAIN IN EFFECT.

In Witness whereof the Parties hereto have set their hands as of the day and year hereinafter written.


WASHINGTON STATE
DEPARTMENT OF FISH
AND WILDLIFE



Larry Peck
Director (Acting)

Date 10-18-98

THE CITY OF SEATTLE,
CITY LIGHT DEPARTMENT



Gary Zarker
Superintendent

Date 11/4/98

EXHIBIT B: FISHERIES PROJECTS TO BE JOINTLY IMPLEMENTED BY THE WDFW AND THE CITY

(All section references refer to the Fisheries Settlement Agreement)

1. **Steelhead Smolt Production:** Increase steelhead production in the upper Skagit River as described in Section 7.3.2. As noted in Section 7.3.2.2, the Program Manager for the Steelhead Smolt Production Program shall be the Washington Department of Fish and Wildlife (WDFW) or the Tribes (Upper Skagit Tribe, Sauk-Suiattle Tribe and/or Swinomish Indian Tribal Community) or some combination. As noted in Section 7.3.2.4, expenditures for the Steelhead Smolt Production Program shall be evenly divided between winter-and summer-run steelhead.
2. **Chinook Salmon Research:** Support the investigation of the declining trend in recruitment of the Skagit chinook stocks, as described in Section 7.3.3.
3. **Off-Channel Chum Salmon Habitat:** Inventory, develop and improve off-channel chum habitat as described in Section 7.3.4. As noted in Section 7.3.4.1, WDFW and the Tribes (Upper Skagit Tribe, Sauk-Suiattle Tribe and/or Swinomish Indian Tribal Community) shall be Co-Managers for this project.
4. **County Line and Newhalem Ponds:** Develop additional off-channel spawning and rearing habitat, as described in Section 7.4.
5. **Diablo and Gorge Lake Fisheries:** Develop a captive broodstock supplementation program using native brood stock from Ross Lake or Gorge and/or Diablo Lakes as described in Section 7.6.4.1.
6. **Model Verification Studies:** Conduct the field monitoring studies needed to verify the accuracy of the Effective Spawning Habitat Model and the Temperature Unit Model as described in Section 6.7.1.
7. **Field Monitoring:** Several field monitoring activities will be conducted throughout the term of the Fisheries Agreement including; salmon and steelhead spawning start and end date surveys, salmon and steelhead fry protection start and end date monitoring, and salmon and steelhead fry stranding surveys as described in Section 6.7.2.

FEDERAL ENERGY REGULATORY COMMISSION

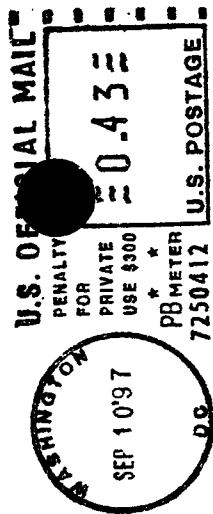
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WASHINGTON, D.C. 20426

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WASHINGTON DEPT. OF FISH & WILDLIFE
HABITAT MANAGEMENT CHIEF
600 N. CAPITOL WAY
OLYMPIA, WA 98504

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

City of Seattle, Washington) Project No. 553-043

ORDER APPROVING EXPENDITURES
(Issued September 9, 1997)

On October 1, 1996, and supplemented on June 13 and August 6, 1997, the City of Seattle, Washington (Seattle) filed a request for approval of an expenditures plan for 1997, as required by license article 415. 1/ As discussed in this order, the expenditures will be approved.

Background

On May 16, 1995, a new license was issued to Seattle for the Skagit River Project (project). 2/ The licensing process evolved from an Offer of Settlement and ten supporting settlement agreements (Settlement Agreement). Parties to the Settlement Agreement include Seattle, the United States Department of Interior, National Park Service (NPS), the United States Department of Interior, Fish and Wildlife Service (USFWS), the Bureau of Indian Affairs, the United States Department of Agriculture, Forest Service (USFS), the United States Department of Commerce, National Marine Fisheries Service (NMFS), the Washington Department of Fish and Wildlife (WDF&W), the North Cascades Conservation Council (Conservation Council), the Swinomish Indian Tribe, Sauk-Suiattle Tribe, Upper Skagit Tribe, and the Nlaka'pamux Nation.

On June 26, 1996, the Commission issued Order on Rehearing 3/ which amended license articles 405 (water release requirements), 406 (power planning reports), 408 (fisheries resources), 409 (erosion control), 410 (wildlife resources), 411 (aviation marker), 412 (recreation), 413 (visual quality), 414 (archeological and historic resources and traditional cultural properties), and 416 (revised Exhibits F and K).

The location of the project is on the Skagit River in Snohomish, Skagit, and Whatcom Counties, near the towns of Diablo, Newhalem, Marblemount, and Rockport, Washington, approximately 100 miles from Seattle. The project consists of

- 1/ Article 415 requires in part that the licensee file a plan for Commission approval on or before October 1, which shows the amounts of money the licensee will spend or contribute pursuant to the license funding provisions and all expenses to be paid from these funds for the following year.
- 2/ 71 FERC ¶ 61,159 (1995).
- 3/ 75 FERC ¶ 61,319 (1996).

DC-A-11

Project No. 553-043

-2-

three developments, Ross, Diablo, and Gorge with a total installed capacity of 689.4 MW.

Since there will be no new hydropower facilities constructed, the measures in the Settlement Agreement deal with operational matters, operational impacts, enhancement measures, and support for cultural practices, and have been incorporated into the license.

Expenditures Description

The expenditures submitted fall under the following categories: (1) fisheries resources (Article 408), (2) erosion control (Article 409), (3) wildlife resources (Article 410), (4) aviation marker (Article 411), (5) recreation (Article 412), (6) visual quality (Article 413), (7) archaeological (Article 414), (8) historic (Article 414), and (9) traditional cultural (Article 414). Each expenditure is fully described below.

Per the terms of the Settlement Agreement all dollar amounts are defined in 1990 dollars and have to be adjusted annually by using the Consumer Price Index (CPI-U) for All Urban Consumers as published by the United States Department of Labor for the Seattle Metropolitan area. The amounts shown below are in 1996 dollars and have been adjusted by an inflation factor of 1.223 to convert the expenditures from 1990 dollars. 4/ Seattle intends to submit a "make whole" payment to the appropriate parties in 1998 that would reflect the CPI-U for 1997.

The requirements outlined in the Settlement Agreement are based on a license year (May 1, 1997 - April 30, 1998). Article 415, however, is based on a calendar year, so the expenditures that are to be paid through 1997 include the requirements under the settlement agreement for license year three.

1. Article 408 - Fisheries Resources Expenditures - \$1,457,409

Article 408 requires that Seattle develop measures to address residual impacts and habitat losses for fishery resources due to operation of the project. It provides for up to \$6,320,000 to implement non-flow measures with objectives,

- 4/ Seattle provided the following information for each expenditure: (1) task name, (2) the duration of the expenditure, (3) the total settlement amount, (4) previous authorizations, (5) previous expenditures, (6) unexpended previous authorizations, (7) the funding level for license year three, (8) estimated expenditures for calendar year 1997, (9) the recipient of the expenditure, and (10) the settlement agreement reference.

program management, schedules, and funding in accordance with the Settlement Agreement.

Seattle submitted the following expenditures: (1) \$214,025 to be provided to the WDF&W for engineering cost to develop the steelhead smolt production program to increase steelhead production in the upper Skagit River; (2) \$509,584 to be provided to the WDF&W for construction related to the steelhead smolt production program; (3) \$244,600 to be provided to the WDF&W for program start-up, rearing, tagging, and related studies, for chinook research to support the investigation of the decline in chinook recruitment (juvenile release to adult survival of the Skagit chinook); (4) \$244,600 to be provided to the WDF&W and the Skagit System Cooperative (SSC) for off-channel chum habitat development and improvement for site inventory, evaluation, and ranking, and for implementation of habitat development, and improvement measures; (5) \$183,450 to be provided to the USFS for habitat improvement and sediment reduction measures on the Skagit Wild and Scenic River or its tributaries; (6) \$61,150 to be provided to the WDF&W and the NPS to develop a captive broodstock supplementation program. The goal is to produce 400,000 fingerlings each year. The WDF&W and NPS will develop a program plan that will include management considerations, facility requirements, and program costs and schedules.

2. Article 409 - Erosion Control Expenditures - \$386,039

Article 409 requires an erosion control plan to be filed to implement those portions of the Settlement Agreement concerning erosion control, and the erosion control plan filed by Seattle on April 30, 1991. Seattle's plan was approved on May 15, 1996 (75 FERC ¶ 62,114). On December 16, 1996, Seattle filed a request to amend the approved plan. On March 18, 1997 (78 FERC ¶ 62,188) the approved plan was amended. The funding provisions include the following: (1) \$845,000 for work at sites identified in the erosion control plan; (2) \$500,000 for maintenance of erosion control measures, installation of erosion control measures at new sites, and completion of work at the sites in the erosion control plan; (3) \$1,344,834 in 1996 dollars for the plant propagation program 5/; and (4) annual payments of \$4,500 for hiring of seasonal help and to purchase supplies for the plant propagation program.

Seattle submitted the following expenditures: (1) \$150,000 to the NPS to initiate a plant propagation program to supply plant stock for erosion control sites; (2) \$225,032 to the NPS for erosion control work, which is designated for equipment purchases, and erosion work at two sites on Ross Lake; and (3)

5/ First Amendment to Memorandum of Agreement filed February 7, 1997.

\$11,007 to the NPS for funding of the plant propagation program, which is designated to provide financial assistance to the NPS for hiring seasonal help and in purchasing supplies.

3. Article 410 - Wildlife Resources Expenditures - \$1,421,935

Article 410 requires a plan to implement the wildlife provisions of the settlement agreement. The plan was filed on November 13, 1995, and approved April 2, 1996 (75 FERC ¶ 62,003). On December 23, 1996, Seattle filed a request to amend the approved wildlife plan, which included the new requirements of the license articles amended by the Order on Rehearing. On March 27, 1997, the approved plan was amended (78 FERC ¶ 62,215). The Settlement Agreement provides for \$19,940,000 for the purpose of funding the measures and programs in the wildlife plan. The funding provisions for this article include the following: (1) \$17,000,000 for land acquisition and habitat enhancement; (2) \$20,000 for cultural resource evaluations, as necessary; (3) \$130,000 for renovation and equipping a wildlife research center; (4) annual payments of \$50,000 for the term of the license for funding of the wildlife and environmental research, development of new and improved wildlife management and information, and monitoring of wildlife and environmental resources in the project; (5) annual payments of \$20,000 for the term of the license for long term monitoring of wildlife and environmental resources; (6) payments for a total of \$90,000 for the purpose of bald eagle inventory and planning; and (7) \$20,00 per year for the term of the license for the environmental learning center.

Seattle has submitted the following expenditures: (1) \$1,000,000 for land acquisition and habitat enhancement for the purpose of securing and preserving wildlife habitat in the Upper Skagit River and South Fork Nooksack River valleys and for the enhancement and manipulation of wildlife habitat; (2) \$128,415 for renovating the wildlife research center; (3) \$183,450 for funding wildlife and environmental research, development of new and improved wildlife management and information, and monitoring of wildlife and environmental resources; (4) \$36,690 to the NPS for long term monitoring of wildlife and environmental resources; (5) \$48,920 to the USFS for bald eagle inventory and planning; and (6) \$24,460 to the North Cascades Institute for the environmental learning center.

4. Article 411 - Aviation Marker Expenditures - \$15,000

Article 411 requires that an aviation marker plan be submitted to install power line identifiers on the project transmission line at river crossings to protect bald eagles at the project. On November 13, 1995, Seattle filed a bald eagle monitoring plan in lieu of the aviation marker plan. Seattle stated that there is insufficient evidence to determine whether aviation markers are warranted. The bald eagle monitoring plan

was approved on January 22, 1996 (74 FERC ¶ 62,026). The aviation marker plan or the plan for additional study is required to be filed by May 31, 1998. An expenditure of \$15,000 was submitted for monitoring bald eagles at the Corkindale Creek site.

5. Article 412 - Recreation Expenditures - \$1,371,375

Article 412 requires that a recreation plan be prepared that implements the provisions of the Settlement Agreement and includes schedules, descriptions, and funding proposals for certain mitigative, enhancement, and continuing recreational measures. The cost estimates for these provisions over the life of the license exceeds \$16,000,000. On November 13, 1995, Seattle filed a recreation resources plan. On November 19, 1996, the Commission approved an interim recreational resources plan (77 FERC ¶ 62,096). Seattle filed a subsequent plan on December 23, 1996, which addresses the additional requirements included by the Order on Rehearing. The plan is currently under review.

Seattle filed expenditures under the following four categories: (1) mitigation measures; (2) enhancement measures, rehabilitation of existing facilities; (3) enhancement measures, new facilities; and (4) ongoing and future funding.

Under mitigation measures, the following expenditures have been submitted: (1) \$8,000 to be provided to the NPS for planning of modifications to the Hozomeen Boat Ramp; and (2) \$50,000 to be provided to the NPS for modifications or replacement of the boat docks at Ross Lake.

Under enhancement measures for rehabilitation of existing facilities, the following expenditures have been submitted: (1) \$7,000 to be provided to the NPS for planning for the Goodell Creek boat access; and (2) \$201,795 to be provided to the USFS for the Marblemount Boat Access.

Under enhancement measures for new facilities the following expenditures have been submitted: (1) \$360,000 for planning and site development of the North Cascades Environmental Learning Center; (2) \$122,300 to be provided to the North Cascades Institute (NCI) for program support and endowment; (3) \$20,000 to be provided to the NPS for improvements to the Gorge Creek Overlook; and (4) \$305,750 to be provided to the USFS for development of the Lower Sauk River Boat Access.

Under ongoing and future funding the following expenditures have been submitted: (1) \$5,000 to the NPS for interpretation and signing in the Ross Lake National Recreation Area (RLNRA); (2) \$79,495 to the USFS for interpretation and signing in the Skagit Wild and Scenic River system and other areas outside the

RLNRA; (3) \$60,000 to implement a study to determine bicyclist use and demand in the project area; (4) \$97,000 to be provided to the NPS for operational and maintenance funding of recreational facilities within the RLNRA; and (5) \$55,035 to be provided to the USFS for operational and maintenance funding in the Skagit Wild and Scenic River system and the Northern Cascades Scenic Highway.

5. Article 413 - Visual Quality Expenditures - \$252,335

Article 413 requires that a visual quality plan be filed implementing the provisions of the Settlement Agreement on Recreation and Aesthetics and the report on Aesthetics filed by Seattle on April 30, 1991. Seattle filed a plan on November 13, 1995, and it was approved on December 10, 1996 (77 FERC ¶ 62,143). The plan includes and addresses the Ross Lake water levels, painting the transmission towers, painting the surge tanks above Diablo and Gorge Powerhouse, painting the Gorge Dam access bridge, redesigning the Ross Dam broome gate shed top to decrease its contrast, removing the Diablo person lift, shielding of exterior lighting at the powerhouses, replacing shiny building roofs and siding with more visually compatible material in Newhalem and Diablo, avoid increasing the contrast of existing project facilities, improving the visual quality of Newhalem and Diablo towns by screening the project structure with plant material, improving the visual quality of Engineering Row in the town of Newhalem, developing a parking area on SR 20 within the town of Newhalem, providing an adequate parking area at the project and at the Ladder Creek Falls Trail Parking area, improving the visual quality of the Town of Diablo and the Diablo visitor center, and maintaining project rights-of-way for visual quality.

Seattle has submitted the following expenditures: (1) \$24,460 to paint the Gorge Dam access Bridge; (2) \$75,000 to conduct an assessment of all the license-required visual quality projects in Newhalem; and \$152,875 for the Skagit Transmission Line right-of-way revegetation.

6. Article 414 - Archaeological -- \$79,720 -- Historic Expenditures -- \$37,302 and Traditional Culture Expenditures -- \$1,642,836.

Article 414 requires that Seattle implement the provisions of the Memorandum of Agreement 6/ and provide an estimated

6/ Article 414 requires that the licensee implement the provisions of the Memorandum of Agreement By and Among the Federal Energy Regulatory Commission; the Washington State Historic Preservation officer; the Advisory Council on Historic Preservation; the U.S. Federally Recognized Sauk-
(continued...)

\$1,817,000 for the duration of the license regarding funding of archaeological and historic measures and programs. Article 414 also provides for \$1,316,669 each for the Upper Skagit Tribe, the Swinomish Indian Tribal Community, and the Sauk-Suiattle Tribe, and \$600,000 for the Nlaka'pamux Nation for funding of expenditures related to traditional cultural properties. These expenditures include supporting cultural activities, completing studies needed to inventory certain traditional cultural properties, and analyzing the potential impacts of project operation.

Seattle has submitted archaeological expenditures of \$48,920 for the development of an archaeological resources mitigation and management plan and \$30,800 to the NPS for the report on preliminary field testing. The archaeological resources mitigation and management plan is to be prepared by a professional archeologist. The plan is to address the information and effects identified in the survey, testing, and evaluation phase, and to establish a process for the identification and reconciliation of potential conflicts between archaeological, recreation, erosion control and wildlife needs and activities. The cost of the report is for publishing and distributing to the scientific community the results of the intensive survey and testing phases and the results of any site excavations that are carried out as part of the archaeological plan.

Concerning Historic Expenditures, Seattle has submitted the following: (1) \$7,338 to setup a computerized record keeping system for historic resources at Skagit; (2) \$1,223 to be provided to NPS for a historic preservation seminar, which is a biennial expenditure (odd numbered years) with the National Park Service providing the seminar during even numbered years; (3) \$1,835 to develop and print in conjunction with the NPS a Newhalem Walking Tour brochure; (4) \$12,230 to assess and re-evaluate the project's interpretive display; and (5) \$14,676 to be provided to the NPS to design and develop one or more interpretive brochures which will incorporate some of the

6/ (...continued)
Suiattle Tribe, the Swinomish Tribal Community, and the Upper Skagit Tribe; the Nlaka'pamux Nation; and the City of Seattle Regarding the Skagit River Hydroelectric Project and the provisions of the Memorandum of Agreement By and Among the Federal Energy Regulatory Commission; the Washington State Historic Preservation Officer; the Advisory Council on Historic Preservation; the U. S. Department of the Interior, National Park Service, the U.S. Federally Recognized Sauk-Suiattle Tribe, the Swinomish Tribal Community, and the Upper Skagit Tribe, and the City of Seattle Regarding the Skagit River Hydroelectric Project.

Historic American Building Survey and Historic American Engineering Record and other historic documentation.

Seattle has submitted the following Traditional Cultural expenditures: (1) \$188,546 each to be provided to Sauk-Suiattle Tribe, the Swinomish Indian Tribal Community, and the Upper Skagit Tribe for cultural activity support; (2) \$616,000 to be provided to the Nlaka'pamux Nation for cultural activity support; (3) \$102,666 each to be provided to Sauk-Suiattle Tribe, the Swinomish Indian Tribal Community, and the Upper Skagit Tribe for traditional cultural properties inventory; (4) \$123,200 to be provided to the Nlaka'pamux Nation for traditional cultural properties inventory; and (5) \$30,000 to conduct research of the relations between the members of the Tribes, the Nation and the project construction personnel.

1997 PROPOSED EXPENDITURES	
Fisheries Resources	\$1,457,409
Erosion Control	\$386,039
Wildlife Resources	\$1,421,935
Aviation Marker	\$15,000
Recreation	\$1,371,375
Visual Quality	\$252,335
Archaeological	\$79,720
Historic	\$37,302
Traditional Cultural Properties	\$1,642,836
TOTAL	\$6,663,951

Conclusion

The expenditures will provide environmental benefits by improving fish habitat and production conditions, reducing erosion, improving wildlife habitat, monitoring for bald eagle hazards, improving recreational facilities, providing greater visual quality, increasing knowledge, protection and education value of archaeological and historic resources, and increasing knowledge and protection of traditional cultural properties.

Our review indicates that the expenditures are consistent with the amounts established in the Settlement Agreement and the license articles and are consistent with the comprehensive plans

for developing the waterway. The expenditures submitted by Seattle will be approved.

In a separate matter Seattle requested that the accounting and funding report requirement established in the Order on Rehearing for license article 410, concerning bald eagle monitoring and inventory be modified. The article requires that the licensee make payments of \$20,000 the first two years of the license term to be used for developing the inventory and a plan for monitoring and meeting the needs of bald eagles. In addition it specifies that the licensee make payments of \$10,000 every five years for the balance of the license term to be used for updating the bald eagle plan and monitoring its performance. The article requires that the licensee file an accounting and funding report during the third year of the license term and every five years thereafter. The report would describe what funds were expended for what purposes during the reporting period and how those funds were used. Seattle requested that the Commission accept annual reports in lieu of reports submitted every five years to be consistent with all other wildlife activities. We find their request acceptable. The report should be included in the annual expenditures statement as required by Article 415.

The Director Orders:

(A) The expenditures plan for 1997 filed by Seattle, as required by article 415, is approved.

(B) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.


Kevin P. Madden
Acting Director
Office of Hydropower Licensing

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Project No. 553-046

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City of Seattle

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Project No. 553-046

ORDER APPROVING AMENDED WILDLIFE RESOURCES PLAN
(Issued March 27, 1997)

On December 23, 1996, the City of Seattle (licensee) filed a request to amend the Wildlife Resources Plan for the Skagit hydroelectric project, approved April 2, 1996, and filed pursuant to article 410. 1/ The requirements of article 410 were amended by the Commission in an Order on Rehearing, issued June 26, 1996. 2/ The request for amendment includes those items approved in the April 2 order in addition to the new requirements of the amended license article. The Skagit Project is located on the Skagit River in Skagit County, Washington.

As required by amended article 410, the filed amendment identifies additional tasks to be completed under the Wildlife Resources Plan, the years that these activities would occur, total funding, and the recipient of those funds. The new tasks include land acquisition and habitat enhancement, cultural resource evaluations, providing annual research funding, long-term monitoring, and bald eagle inventory and planning.

Copies of the amended wildlife resources plan were submitted to the appropriate agencies and tribes on November 18, 1996. No comments were received.

The Amended Wildlife Resources Plan, filed December 23, 1996, should enhance wildlife research and education facilities as required by article 410 of the Order on Rehearing, issued June 26, 1996. This amended plan should be approved.

The Director orders:

(A) The Amended Wildlife Resources Plan filed on December 23, 1996, pursuant to the Order on Rehearing issued June 26, 1996, is approved.

(B) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 CFR § 385.713.


Kevin P. Madden
Acting Director
Office of Hydropower Licensing

1/ 75 FERC 62,003

2/ 75 FERC 61,319

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

City of Seattle

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Project No. 553-045

ORDER AMENDING APPROVED SOIL EROSION CONTROL PLAN

(Issued March 18, 1997)

On December 16, 1996, the City of Seattle (licensee) filed a request to amend the Soil Erosion Control Plan for the Skagit Project, approved on May 15, 1996. 1/ This request was supplemented on February 7, 1997. The licensee seeks to transfer implementation of the plan's Skagit native plant propagation program from the licensee to the North Cascades National Park Service Complex (NPS). The Skagit Project is located on the Skagit River in Skagit County, Washington.

The approved Soil Erosion Control Plan requires the licensee to implement a plant propagation program for supplying native plants for erosion control. Specifically, the licensee is required to construct a greenhouse and provide plants to the NPS to revegetate eroded sites within the project area.

The filed request includes an agreement between the licensee and the NPS stating that the licensee would modify and use the NPS greenhouse facilities at Marblemount and program responsibility would be transferred to the NPS. 2/ The licensee would use the funds that had been set aside for the construction of a new greenhouse to pay for plant propagation services, including the modification of the NPS's greenhouse facilities. The agreement would result in the same level of plant propagation as the original program.

In the filed request, the licensee proposes a \$150,000 initial payment to the NPS. In addition, the licensee would make annual payments of \$4,500 to the NPS in accordance with Section 6.3 of the Erosion Control Settlement Agreement for the hiring of seasonal help and to purchase supplies for the plant propagation program. Additional funding information will be filed with the Commission as part of the annual expenditures plans.

The requested amendment was filed with the appropriate resource agencies and the tribes. On November 8, 1996, the Washington Department of Fish and Wildlife concurred with the proposed amendment. No other comments were received.

1/ 75 FERC 62,114

2/ First Amendment to Memorandum of Agreement (12/94) filed February 7, 1997.

Project No. 553-045

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While we understand the plant propagation and the revegetation will be managed by the NPS, the licensee is ultimately responsible for revegetating eroding areas at the project. We believe the licensee's proposed amendment to the Soil Erosion Control Plan satisfies the intent of the plan. The proposed modifications would ensure that native plants are available to protect areas that are subject to erosion. The amendment to this plan should be approved.

The Director orders:

(A) The amendment to the project's approved Soil Erosion Control Plan, filed on December 16, 1996 and supplemented February 7, 1997, is approved.

(B) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 CFR § 385.713.


Kevin P. Madden
Acting Director
Office of Hydropower Licensing

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

City of Seattle)

Project No. 553-041

ORDER APPROVING VISUAL QUALITY PLAN

(Issued December 10, 1996)

The City of Seattle (licensee) filed on November 13, 1995, a visual resources plan (plan) required by article 413 of the project license for the Skagit River Project.1/ The project is located on the Skagit River, in Snohomish, Skagit, and Whatcom Counties, Washington.

BACKGROUND

Article 413 requires the licensee to file for Commission approval a project visual quality plan implementing the provisions of the Settlement Agreement on Recreation and Aesthetics (SA)2/ and the Report on Aesthetics filed by the licensee on April 30, 1991. The article requires that the plan include provisions of the SA which are, at a minimum, construction schedules, descriptions of each proposed visual enhancement, and funding proposals for each item.

Motions to intervene on the order issuing license were filed by six parties to the proceeding: the U.S. Department of Agriculture; the U.S. Departments of Commerce and the Interior, jointly; the Washington Department of Fish and Wildlife; the Sauk-Suiattle, Upper Skagit, and Swinomish Indian Tribes,

- 1/ 71 FERC ¶ 61,159. See also Order on Rehearing, issued on June 26, 1996 (75 FERC ¶ 61,139).
- 2/ The SA, approved in the Order Issuing License, issued on May 16, 1995, consists of the following documents, with supporting plans and reports: (1) Offer of Settlement; (2) Fisheries Settlement Agreement; (3) Settlement Agreement on Recreation and Aesthetics; (4) Settlement Agreement Concerning Erosion Control; (5) Settlement Agreement Concerning Wildlife; (6) Settlement Agreement Concerning Cultural Resources (Archaeological and Historic Resources); (7) Settlement Agreement Concerning Cultural Resources (Archaeological Resources); (8) Settlement Agreement Concerning Traditional Cultural Properties (the Upper Skagit Tribe); (9) Settlement Agreement Concerning Traditional Cultural Properties (the Sauk-Suiattle Tribe); (10) Settlement Agreement Concerning Traditional Cultural Properties (the Swinomish Indian Tribal Community); and (11) Settlement Agreement Concerning Traditional Cultural Properties (the Nlaka'pamux Nation).

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Project No. 553-041

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jointly; the City of Seattle; and the North Cascades Conservation Council. On June 26, 1995, the Order on Rehearing amended the license based on the facts presented on rehearing. Article 413 was amended to eliminate redundancy with article 409 by removing a requirement to build a greenhouse (now required only in article 409) and to clarify some wording.

The amended Article 413 also requires the licensee to file, for Commission approval, a visual quality plan within 180 days from the license issuance date.

LICENSEE'S PROPOSED PLAN

The licensee proposes a wide variety of aesthetic enhancements at the project. The following list identifies what types of aesthetic enhancements will be provided by the licensee:

- (1) Filling the Ross Lake Reservoir as soon as possible after April 15 and keeping it full through Labor Day weekend consistent with resource management constraints.
- (2) Painting the following structures a less visually contrasting color: project transmission line towers; the two surge tanks above the Diablo and Gorge Dam powerhouses and; the structural steel bridge on the Gorge Dam access road bridge.
- (3) Redesigning or modifying the Ross Dam Broome Gate Shed to decrease its contrast with the surroundings.
- (4) Removing the Diablo person lift.
- (5) Providing high angle cut-off shielding for all exterior lighting and/or replace the mercury or low-intensity exterior lamps with high-intensity sodium lamps at the three powerhouses to the extent consistent with safe project operations.
- (6) Replacing shiny, high contrast or reflective galvanized or aluminum roofing/siding on buildings in Newhalem and Diablo with more visually compatible material.
- (7) Avoid increasing the contrast of existing project facilities as a result of ongoing maintenance activity.
- (8) Improving the visual quality of Newhalem and Diablo towns by using plant material to screen views of project structures;
- (9) Improving the visual quality of Engineering Row in Newhalem, including removal of three storage buildings.
- (10) Developing a parking area on SR 20 within the town of Newhalem.

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(11) Providing adequate parking for employees and visitors at the powerhouse and at the Ladder Creek Falls Trail.

(12) Improving the visual quality of the Town of Diablo and the Diablo Visitor Center.

(13) Maintaining project rights-of-way for visual quality purposes, including applying a range of vegetation management prescriptions to reduce their visual impacts.

AGENCY COMMENTS

The Forest Service (FS), National Park Service (NPS), and Washington Department of Fish and Wildlife (WDFW) commented on the licensee's proposed plan in letters dated October 17, 19, and 27, 1995, respectively. The North Cascades Conservation Council [jointly with American Rivers (collectively referred to as NCCC)] and Skagit System Cooperative (SSC) provided comments in letters dated October 23 and 26, 1995, respectively. The Fish and Wildlife Service (FWS), Bureau of Indian Affairs (BIA), National Marine Fisheries (NMFS), and Tribes did not provide written comments on the proposed plan.

The FS stated the licensee should modify the proposed plan to reflect any changes in the license, including any FS projects added as a result of Commission action on the requests for rehearing. 3/

The NPS provided no specific comments on the visual quality plan. It did suggest the licensee state in the plan that if conflict arises between the plan and the SA, then the SA would prevail.

The WDFW stated, in general, the proposed plan accurately represents those provisions contained in the SA. The WDFW stated they do not want to convey approval of the omissions of substantial provisions of the SA from the license by commenting on the proposed plan. The WDFW requested the licensee state in a cover letter to the Commission that the plans were developed as a condition of the license and should be considered only in the context of the complete SA.

The WDFW stated essential details, i.e., interagency coordinating committee structure and function, definitions, and procedures, are not included in the licensee's proposed plan. The WDFW also noted that schedules contained in the SA and proposed plan are subject to modification and approval of the appropriate committees. The WDFW requested that the creation of

3/ See Order on Rehearing, issued June 26, 1996.

the committees called for in the SA should be included in the proposed plan and is necessary in order to carry out actions in the SA, license, and implementation plans.

The NCCC stated that the "annual meetings" discussed in the proposed plan do not pertain exclusively to fisheries resources, and thus should not be listed under the fishery resources plan. They also recommended changing the compliance date for the annual meeting from "ongoing" to "annually."

The SSC stated that the proposed plan is consistent with the SA. No further comments were provided by SSC.

LICENSEE'S RESPONSE TO AGENCY COMMENTS

In a letter dated November 9, 1995, the licensee provided a response to agency comments. The licensee stated that two general comments were received from the consulted entities. The first was that the proposed plan, as excerpts from the SA, was presumed to summarize the SA in a convenient fashion, but was not intended to change the meaning or terms of the SA. The licensee stated this is the intent and further clarified this in the proposed plan. The second comment was a desire to see additional plans prepared for other SA projects not included in the license, should they be incorporated into the license at a later date. The licensee stated its willingness to prepare additional plans or modify existing plans accordingly.

The licensee stated the remaining comments were straightforward and incorporated the suggested changes into the final version with the following exceptions. The licensee stated the creation of the committees called for in the SA was not included in the proposed plan because this is not a license-required task; it is a subcomponent of various tasks. The licensee stated that, in follow-up discussions with WDFW, it was agreed that inclusion of this subcomponent in the proposed plan is not necessary.

Regarding comments received from the NCCC, the licensee stated that "annual meetings" are only included in the fishery resources plan because that is where they appear in the license as specific tasks. The licensee changed certain compliance dates included in the plan from "ongoing" to "annually". The licensee also clarified that "ongoing" refers to the term of the license.

DISCUSSION

The licensee's proposed visual quality plan includes those items required by the original Article 413 and is consistent with the SA, as required by the license. Implementation of the proposed plan provides for the following: (1) minimizing the

adverse visual effects of reservoir drawdown at Ross Lake by maintaining full pond for most of the recreation season; (2) painting project structures to blend in with the surrounding landscape; (3) replacing high contrast or shiny roofs on certain project buildings; (4) adding visitor parking space and; (5) using various vegetation management prescriptions to reduce visual impacts. The licensee stated the visual quality plan was intended to summarize the contents of the SA and, as far as it was concerned, the SA would prevail in the event of conflict between the SA and the visual quality plan. As pointed out in the June 26 Commission Order on Rehearing, the intent of the license is to ensure the SA is implemented.


The WDFW stated that schedules contained in the proposed plan are subject to modification and approval by the appropriate committees. It should be noted that, in the future, if changes (including schedules) to the visual quality plan are determined necessary, the licensee must submit a request to the Commission to amend the visual quality plan.

The licensee's proposed visual quality plan satisfies the requirements of Article 413 and should be approved.

The Director orders:

(A) The licensee's visual quality plan, filed with the Commission on November 13, 1995, is approved.

(B) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days from the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.


J. Mark Robinson
Director, Division of
Licensing and Compliance

City of Seattle

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Project No. 553-040

ORDER APPROVING AN INTERIM RECREATIONAL RESOURCES PLAN

(Issued November 19, 1996)

The City of Seattle (licensee) filed on November 13, 1995, a recreational resources plan (plan). The plan is required by article 412 of the project license for the Skagit River Project. 1/ The project is located on the Skagit River, in Snohomish, Skagit, and Whatcom Counties, Washington.

BACKGROUND

Article 412 requires the licensee to file for Commission approval a project recreation plan implementing the provisions of the Settlement Agreement on Recreation and Aesthetics (SA) 2/ and the Report on Recreational Resources filed by the licensee on April 30, 1991. The article requires that the plan include provisions of the SA which are, at a minimum, construction schedules, descriptions of each proposed provision, descriptions of off-site mitigation 3/, if any, and funding proposals for each provision.

1/ 71 FERC ¶ 61,159. See also Order on Rehearing, issued on June 26, 1996 (75 FERC ¶ 61,139).

2/ The SA, approved in the Order Issuing License, issued on May 16, 1995, consists of the following documents, with supporting plans and reports: (1) Offer of Settlement; (2) Fisheries Settlement Agreement; (3) Settlement Agreement on Recreation and Aesthetics; (4) Settlement Agreement Concerning Erosion Control; (5) Settlement Agreement Concerning Wildlife; (6) Settlement Agreement Concerning Cultural Resources (Archaeological and Historic Resources); (7) Settlement Agreement Concerning Cultural Resources (Archaeological Resources); (8) Settlement Agreement Concerning Traditional Cultural Properties (the Upper Skagit Tribe); (9) Settlement Agreement Concerning Traditional Cultural Properties (the Sauk-Suiattle Tribe); (10) Settlement Agreement Concerning Traditional Cultural Properties (the Swinomish Indian Tribal Community); and (11) Settlement Agreement Concerning Traditional Cultural Properties (the Nlaka'pamux Nation).

3/ "Off -site" lands and facilities to be used for project purposes are to be included within a non-contiguous, "island" boundary.

Motions to intervene on the order issuing license were filed by six parties to the proceeding: the U.S. Department of Agriculture; the U.S. Departments of Commerce and the Interior, jointly; the Washington Department of Fish and Wildlife; the Sauk-Suiattle, Upper Skagit, and Swinomish Indian Tribes, jointly; the City of Seattle; and the North Cascades Conservation Council. On June 26, 1995, the Order on Rehearing amended the license based on the facts presented on rehearing. Article 412 was amended to require the licensee to fund additional recreational facilities and to rehabilitate others at six off-site locations (islands). In addition, article 5 requires the licensee to acquire these lands and include them in the project boundary. The amended article 412 also requires the licensee to file a revised recreational resources plan within 180 days from the order issuance date.

This order addresses the requirements of article 412 as it was in the order issuing license. The requirements added to the article involve actions separate and independent of those required by the original article. Essentially, the original article required a plan for recreation at the immediate project area and the amended article adds a requirement to provide a plan for specific off-site locations. We, therefore, are treating the subject recreational resource plan as an interim plan until the revised plan is approved.

LICENSEE'S PROPOSED PLAN

The licensee plans to continue to operate and maintain the existing recreational facilities and services. It also proposes to provide a wide variety of new recreational facilities and to enhance many existing facilities. In addition, needs assessments are planned to project future recreational improvements. Funding for the provisions of the plan is itemized in the plan as well as the schedule for completing each proposal.

The licensee plans to have an annual meeting of the interested parties to facilitate coordination of implementation of the various components of the SA as required by article 402 of the license.

The following table provides an itemized list of what types of recreational facilities and services will be provided by implementing the proposed plan.

Skagit Tours	Damnation Creek Boat-in Site
Diablo Tugboat/Ferry Service	Hozomeen Water Distribution System
Newhalem Visitor Center	North Cascades Environmental Learning Center
Newhalem/Diablo Picnic Site	Gorge Creek Overlook
Ladder Creek Falls Trail	Thunder Lake Fishing Facility
Colonial Creek Electric Cable	Thunder Knob Trail
Hozomeen Boat Ramp	Happy Flats/Panther Trail
Ross Lake Campground Boat Docks	Desolation/Hozomeen Trail
Gorge Lake Boat Ramp	Needs Assessments for:
Colonial Creek Boat Ramp	Bicycle Facilities
Newhalem Visitor Station	General Future Recreation
Goodell Creek Raft Access	

AGENCY COMMENTS

The Forest Service (FS), National Park Service (NPS), and Washington Department of Fish and Wildlife (WDFW) commented on the licensee's proposed plan in letters dated October 17, 19, and 27, 1995, respectively. The North Cascades Conservation Council [jointly with American Rivers (collectively referred to as NCCC)] and Skagit System Cooperative (SSC) provided comments in letters dated October 23 and 26, 1995, respectively. The Fish and Wildlife Service (FWS), Bureau of Indian Affairs (BIA), National Marine Fisheries (NMFS), and Tribes did not provide written comments on the proposed plan.

The FS stated the licensee should modify the proposed plan to reflect any changes in the license, including any FS projects added as a result of Commission action on the requests for rehearing. 4/

The NPS provided no specific comments on the recreational resources plan. It did suggest the licensee state in the plan that if conflict arises between the plan and the SA, then the SA would prevail.

The WDFW stated, in general, the proposed plan accurately

4/ See Order on Rehearing, issued June 26, 1996.

represents those provisions contained in the SA. The WDFW stated they do not want to convey approval of the omissions of substantial provisions of the SA from the license through commenting on the proposed plan. The WDFW requested the licensee state in a cover letter to the Commission that the plan was developed as a condition of the license and should be considered only in the context of the complete SA.

The WDFW stated essential details, i.e., interagency coordinating committee structure and function, definitions, and procedures, are not included in the licensee's proposed plan. The WDFW also noted that schedules contained in the SA and proposed plan are subject to modification and approval of the appropriate committees. The WDFW requested that the creation of the committees called for in the SA should be included in the proposed plan and is necessary in order to carry out actions in the SA, license, and implementation plans.

The NCCC stated that the general measures included in the proposed plan, specifically "annual meeting" and "Ross Lake operations," do not pertain exclusively to fisheries resources, and thus should not be listed under the fishery resources plan. They also recommended changing the compliance date for the annual meeting from "ongoing" to "annually."

The SSC stated that the proposed plan is consistent with the SA. No further comments were provided by SSC.

LICENSEE'S RESPONSE TO AGENCY COMMENTS

In a letter dated November 9, 1995, the licensee provided a response to agency comments. The licensee stated that two general comments were received from the consulted entities. The first was that the proposed plan, as excerpts from the SA, was presumed to summarize the SA in a convenient fashion, but was not intended to change the meaning or terms of the SA. The licensee stated this is the intent and further clarified this in the proposed plan. The second comment was a desire to see additional plans prepared for other SA projects not included in the license, should they be incorporated into the license at a later date. The licensee stated its willingness to prepare additional plans or modify existing plans accordingly.

The licensee stated the remaining comments were straight forward and incorporated the suggested changes into the final version with the following exceptions. The licensee stated the creation of the committees called for in the SA was not included in the proposed plan because this is not a license-required task; it is a subcomponent of various tasks. The licensee stated that, in follow-up discussions with WDFW, it was agreed that inclusion of this subcomponent in the proposed plan is not necessary.

Regarding comments received from the NCCC, the licensee stated that "annual meetings" and "Ross Lake operations" are only included in the fishery resources plan because that is where they appear in the license as specific tasks. The licensee changed certain compliance dates included in the plan from "ongoing" to "annually". The licensee also clarified that "ongoing" refers to the term of the license.

DISCUSSION

The licensee's proposed recreational resources plan includes those items required by the original article 412 and is consistent with the SA, as required by the license. Implementation of the proposed plan provides for the following: (1) the continuation of existing recreational measures such as tours, tugboat/ferry services, trails, and park/picnic sites; (2) mitigation and enhancement measures such as the construction and improvement of boat ramp facilities, a visitor center, a raft access site, an environmental learning center, an overlook, trails, and fishing facilities; and (3) ongoing and future funding for operation and maintenance and various types of future recreation needs assessments. The licensee stated the recreational resources plan was intended to summarize the contents of the SA and, as far as it was concerned, the SA would prevail in the event of conflict between the SA and the recreational resources plan. As pointed out in the June 26 Commission Order on Rehearing, the intent of the license is to ensure the SA is implemented.

The FS recommended the plan be modified as necessary to include any FS projects added to the license after the order on rehearing. This concern was resolved in the June 26 Order on Rehearing. The recommendation was accepted. Article 412 requires the licensee to file a revised recreational resources plan including FS projects.

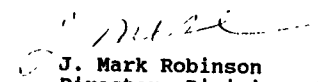
The WDFW stated that schedules contained in the proposed plan are subject to modification and approval by the appropriate committees. It should be noted that, in the future, if changes (including schedules) to the recreational resources plan are determined necessary, the licensee must submit a request to the Commission to amend the recreational resources plan.

The licensee's proposed recreational resources plan, with the exception of the additional requirements established by the June 26 rehearing order, satisfies the requirements of article 412 and should be approved. As shown by the previous table in this order, implementation of the plan will provide a wide variety recreational improvements that will satisfy varied interests. The revised plan that incorporates certain off-site recreation areas (the islands) will be considered in a separate order when it is filed with the Commission.

The Director orders:

(A) The licensee's recreational resources plan, filed with the Commission on November 13, 1995, is approved.

(B) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days from the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.


J. Mark Robinson
Director, Division of
Licensing and Compliance

BUCK SLIP TO: Registry

FROM: J. Mark Robinson, Director
Division of Licensing & Compliance

IN THE MATTER OF Project No. 553-040

1. Regional Office
2. OGC-Hydro
3. D2SR - Room 5A-09
4. RIMS
5. Parties on Service List
6. Parties Consulted

Also, please note this order



does

or



does not

amend the license/exemption

OHL/DLC
Room 5E-10
Phone No. 219-2750

City of Seattle)

Project No. 553-032

ORDER MODIFYING AND APPROVING FISHERY RESOURCES PLAN

(Issued July 30, 1996)

City of Seattle (licensee) filed on November 13, 1995, a fishery resources plan. The fishery resources plan is required by article 401 of the project license for the Skagit River Project. 1/ The project is located on the Skagit River, in Snohomish, Skagit, and Whatcom Counties, Washington.

Article 401 requires the licensee to consult with the National Park Service (NPS); U.S. Fish and Wildlife Service (FWS); U.S. Bureau of Indian Affairs (BIA); U.S. Forest Service (FS); National Marine Fisheries Service (NMFS); Upper Skagit Tribe, Sauk-Suiattle Tribe and Swinomish Tribal Community (Tribes); Washington Department of Fish and Wildlife (WDFW); and the North Cascades Conservation Council (NCCC) [collectively referred to as Interested Parties] and develop a fishery resources plan to minimize impacts of the operation of the project on fishery resources, including related spawning grounds and habitat.

The fishery resources plan shall include the following provisions of the Fisheries Settlement Agreement (FSA) 2/ incorporating the Anadromous Fish Flow Plan and the Anadromous and Resident Fish Non-flow Plan. The fishery resources plan shall address, at a minimum, the following: (1) oversight and coordination with the Flow Plan Coordinating Committee (FCC) and the Non-flow Plan Coordinating Committee (NCC); (2) Ross Lake reservoir operations; (3) the anadromous fish flow plan; (4) flow insufficiency; (5) flow limitations; (6) operating considerations; (7) monitoring and compliance; (8) the anadromous and resident fish non-flow plan; (9) program managers; (10) anadromous fish programs; (11) County Line and Newhalem Ponds; and (12) resident trout protection and production programs. The fishery resources plan shall address the requirements of articles 402 through 408 of the license, including descriptions, schedules, funding mechanisms and project "islands", if any, established for off-site mitigation.

LICENSEE'S PROPOSED PLAN

The licensee plans to host an annual meeting of the Interested Parties to facilitate coordination of implementation of the various components of the Settlement Agreement (SA) 3/ as required by article 402 of the license.

The licensee plans to follow the guidelines outlined in section 4.1 of the FSA for operations at Ross Lake. Further, the licensee plans to follow the flow regulation guidelines specified in section 6.3 of the FSA. Flow insufficiency shall mean water conditions during a month or months characterized by abnormally low precipitation and sidestream runoff that has the potential to result in a failure to refill Ross Lake by July 31 or empty Ross Lake if operations continue to draft at the rate determined by minimum required flows. Months which are characterized by any of the flow insufficiency criteria in section 6.4.3 of the FSA shall be considered Insufficient Months. The licensee plans to respond to a flow insufficiency as described in section 6.4.4 of the FSA. Flow limitations and operating considerations, as contained in sections 6.5 and 6.6 of the FSA, respectively, are provided in the licensee's proposed plan.

The licensee plans to conduct field monitoring studies to verify the accuracy of the Effective Spawning Habitat Model and Temperature Unit Model (the Temperature Unit Model will be verified if deemed necessary by the FCC), as described in section 6.7.1.1 and 6.7.1.3, respectively, of the FSA.

Further, the licensee plans to complete the fry stranding surveys annually for a period of no less than three years to monitor the effectiveness of the fry protection measures described in section 6.3 of the FSA. The licensee plans to conduct the fry stranding surveys as described in section 6.7.2.4

3/ The SA, approved in the Order Issuing License, issued on May 16, 1995, consists of the following documents, with supporting plans and reports: (1) Offer of Settlement; (2) Fisheries Settlement Agreement; (3) Settlement Agreement on Recreation and Aesthetics; (4) Settlement Agreement Concerning Erosion Control; (5) Settlement Agreement Concerning Wildlife; (6) Settlement Agreement Concerning Cultural Resources (Archaeological and Historic Resources); (7) Settlement Agreement Concerning Cultural Resources (Archaeological Resources); (8) Settlement Agreement Concerning Traditional Cultural Properties (the Upper Skagit Tribe); (9) Settlement Agreement Concerning Traditional Cultural Properties (the Sauk-Suiattle Tribe); (10) Settlement Agreement Concerning Traditional Cultural Properties (the Swinomish Indian Tribal Community); (11) Settlement Agreement Concerning Traditional Cultural Properties (the Nlaka'pamux Nation).

1/ 71 FERC ¶ 61,159. See also Order on Rehearing, issued on June 26, 1996 (75 FERC ¶ 61,139).

2/ Filed with the Commission on April 30, 1991.

of the FSA. Also, the licensee stated it may elect to conduct annual monitoring surveys used to identify alternate Salmon Spawning and Steelhead Fry Protection Period start and end dates, as described in sections 6.7.2.2 and 6.7.2.3, respectively, of the FSA.

Regarding compliance monitoring, the licensee plans to make available to all Interested Parties complete records of the real-time flow data at both the Newhalem and Marblemount gages. Semi-annual reports will be prepared to demonstrate compliance with the instream flows and operating restrictions included in the FSA. The reporting periods are January 1 through June 30 and July 1 through December 31. The licensee plans to submit the semi-annual reports to the Interested Parties and the Commission within 120 days of the end of each reporting period. ^{4/} The semi-annual reports will include the information outlined in section 6.7.3.3 of the FSA.

The licensee proposes to implement the Anadromous and Resident Non-Flow Plan (the Non-Flow Plan), as described in section 7.0 of the FSA. The Non-Flow Plan contains measures for steelhead production, chinook research, off-channel chum habitat development and improvement, instream or off-channel fish habitat development and sediment reduction, and provisions for a resident trout protection and production program. The licensee plans to prepare annual reports regarding the progress made in the implementation of the Non-Flow Plan, as described in section 7.2.2 of the FSA and submit the reports to the NCC.

AGENCY COMMENTS

The FS, NPS, and WDFW commented on the licensee's proposed plan in letters dated October 17, 19, and 27, 1995, respectively. The North Cascades Conservation Council [jointly with American Rivers (collectively referred to as NCCC)] and Skagit System Cooperative (SSC), provided comments in letters dated October 23 and 26, 1995, respectively. The FWS, BIA, NMFS, and Tribes did not provide written comments on the proposed plan.

The FS stated the licensee should modify the proposed plan to reflect any changes in the license, including any FS projects that are added as a result of Commission action on the requests for rehearing. ^{5/}

^{4/} Article 407 allows the report to be filed within 150 days of the end of the reporting period for the first five years of the project license.

^{5/} See Order on Rehearing, issued June 26, 1996.

The NPS suggested the licensee state that if conflict arises between the plan and the license, or FSA, then the license or FSA prevail.

The WDFW stated they do not want to convey approval of the omissions of substantial provisions of the SA from the license through commenting on the proposed plan. The WDFW requested the licensee state in a cover letter to the Commission that the plans were developed as a condition of the license and should be considered only in the context of the complete SA.

The WDFW stated essential details, i.e., interagency coordinating committee structure and function, definitions, and procedures, are not included in the licensee's proposed plan. The WDFW also noted that schedules contained in the SA and proposed plan are subject to modification and approval of the appropriate committees. The WDFW requested that the creation of the committees called for in the FSA should be included in the proposed plan and is necessary in order to carry out actions in the FSA, license, and implementation plans.

The WDFW stated, in general, the proposed plan accurately represents those provisions contained in the FSA. Other comments made by WDFW regarding clarification of compliance dates were incorporated into the licensee's proposed plan.

The NCCC stated that the general measures included in the proposed plan, specifically "annual meeting" and "Ross Lake operations", do not pertain exclusively to fisheries resources, and thus should not be listed under the fishery resources plan. They also recommended changing the compliance date for the annual meeting from "ongoing" to "annually".

The SSC stated that the proposed plan is consistent with the FSA.

LICENSEE'S RESPONSE TO AGENCY COMMENTS

In a letter dated November 9, 1995, the licensee provided a response to agency comments. The licensee stated that two general comments were received from the intervenors. The first was that the proposed plan, as excerpts from the FSA, was presumed to summarize the FSA in a convenient fashion, but was not intended to change the meaning or terms of the FSA. The licensee stated this is the intent and have further clarified this in the proposed plan. The second comment was a desire to see additional plans prepared for other SA projects not included in the license, should they be incorporated into the license at a later date. The licensee stated its willingness to prepare additional plans or modify existing plans accordingly.

The licensee stated the remaining comments were straightforward and incorporated the suggested changes into the final version with the following exceptions. The licensee stated the creation of the committees called for in the FSA was not included in the proposed plan because this is not a license-required task; it is a subcomponent of various tasks. The licensee stated that in follow-up discussions with WDFW, it was agreed that inclusion of this subcomponent in the proposed plan is not necessary.

Regarding comments received from the NCCC, the licensee stated that "annual meetings" and "Ross Lake operations" are only included in the fishery resources plan because that is where they appear in the license as specific tasks. The licensee changed certain compliance dates included in the plan from "ongoing" to "annually". The licensee also clarified that "ongoing" refers to the term of the license.

DISCUSSION

In general, the licensee's proposed fishery resources plan includes those items required by article 401 and is consistent with the FSA, as required by the license. Implementation of the proposed plan provides for the following: (1) annual meetings with the interested parties; (2) Ross Lake operations; (3) minimum flow requirements and limits to downramping rates for fish spawning, incubation, and fry protection; (4) flow insufficiencies; (5) operating considerations; (6) power scheduling procedures; (7) model verification studies; (8) monitoring and documenting the release of the required flows; and (9) implementation of the Non-Flow Plan. The licensee stated the fishery resources plan was intended to summarize the contents of the FSA. The licensee clarified, as recommended by WDFW and NPS, the FSA would prevail in the event of conflict between the FSA and the fishery resources plan.

The FS recommended the plan be modified as necessary to include any FS projects added to the license after the order on rehearing. In the June 26 Order on Rehearing, article 408 was amended to include the FS as one of the recipients of the Non-Flow Plan funds. The licensee's proposed plan included provisions for providing monies to the FS for implementation of the Non-Flow Plan. Clarification provided in the June 26 order should address the FS concerns regarding FS projects related to articles 401-408 of the license (those articles related to the FSA). If future modifications to the plan are necessary, as discussed below, the licensee may request to amend the fishery resources plan at that time.

The WDFW stated that schedules contained in the proposed plan are subject to modification and approval by the appropriate

committees. It should be noted that, in the future, if changes to the fishery resources plan are determined to be necessary, the licensee may submit a request to the Commission to amend the fishery resources plan.

Article 401 requires that the proposed plan include funding mechanisms in the proposed plan. Article 415, however, requires the licensee to file a Project Expenditures Plan, for Commission approval, annually. This plan is to include the amounts of money the licensee will spend or contribute pursuant to the license funding provisions and all expenses to be paid from these funds for the following year, including funds provided to other federal and state agencies. The specific funding mechanisms for the plan required by article 401 were addressed in the licensee's project expenditures plan, 6/ and will be addressed annually, as required by article 415.

Not included in the licensee's proposed plan were the following: (1) provisions for inviting Commission staff to attend annual meetings, as required by article 402; (2) filing a meeting summary with the Commission, also required by article 402; and (3) filing with the Commission annual and final reports regarding implementation of the Non-Flow Plan, as required by article 408.

Article 402 requires the licensee to invite Commission staff to attend the annual meeting with relevant agencies, tribes, and interested parties. Further, article 402 requires that the licensee file a summary of these meetings annually with the Commission. The licensee's proposed plan did not include a schedule for filing the meeting summary with the Commission. Therefore, within 60 days of an annual meeting, the licensee should file with the Commission a summary of the annual meeting with the relevant agencies and tribes, interested parties, and Commission staff, as required by article 402.

It should also be noted that article 408 requires the licensee to file, within 60 days following the anniversary date of the license, an annual report for each non-flow program, prepared in accordance with section 7.2.2 of the FSA.

The licensee's proposed fishery resources plan, with the modification discussed, should be approved.

6/ See Order Approving Expenditures, issued on March 14, 1996 (74 FERC ¶ 62,134).

The Director orders:

(A) The licensee's fishery resources plan, filed with the Commission on November 13, 1995, as modified in paragraph (B), is approved.


(B) Within 60 days of an annual meeting required by article 402, the licensee shall file with the Commission a summary of the annual meeting with the relevant agencies and tribes, interested parties, and Commission staff.

(C) Unless otherwise directed in this order, the licensee shall file an original and eight copies of any filing required by this order with:

The Secretary
Federal Energy Regulatory Commission
Mail Code: DPCA, HL-21.1
888 First Street, N.E.
Washington, DC 20426

In addition, the licensee shall serve copies of these filings on any entity specified in this order to be consulted on matters related to these filings. Proof of service on those entities shall accompany the filings with the Commission.

(D) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days from the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.


J. Mark Robinson
Director, Division of Project
Compliance and Administration

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Elizabeth Anne Moler, Chair;
Vicky A. Bailey, James J. Hoecker,
William L. Massey, and Donald F. Santa, Jr.

City of Seattle, Washington) Project No. 553-024, -025
U.S. Department of the Interior) Docket No. EL78-36-001, -002

ORDER ON REHEARING

(Issued June 26, 1996)

On May 16, 1995, the Commission issued a new license to the City of Seattle, Washington (Seattle), for the continued maintenance and operation of its 689.4 megawatt (MW) Skagit River Project No. 553, 1/ and approved a comprehensive settlement regarding a broad range of mitigation and enhancement conditions to the license. 2/ Timely requests for rehearing were filed by six parties to the proceeding: the U.S. Department of Agriculture (Agriculture); the U.S. Departments of Commerce and the Interior, jointly (Interior); the Washington Department of Fish and Wildlife (Washington); the Sauk-Suiattle, Upper Skagit, and Swinomish Indian Tribes, jointly (Tribes); the City of Seattle (Seattle); and the North Cascades Conservation Council (Conservation Council). We will grant and deny rehearing as discussed below.

A. Late Motion to Intervene

On June 15, 1995, American Rivers filed a late motion to intervene and, jointly with the Conservation Council, a timely request for rehearing of the May 16, 1995 license order. On July 12, 1995, the Commission denied American Rivers' intervention motion and dismissed its rehearing request, noting that an entity cannot defer intervening until it concludes that the proceeding is not turning out to its liking. 3/ The order also pointed out that American Rivers' rehearing arguments would

1/ The Skagit River Project is located on the Skagit River in Snohomish, Skagit, and Whatcom Counties, Washington, and almost entirely within the outer boundaries of the Ross Lake National Recreation Area. The order also terminated as resolved the proceeding in Docket No. EL78-36-000.

2/ 71 FERC ¶ 61,159.

3/ 72 FERC ¶ 61,023.

Project No. 553-024, et al. - 2 -

in any event be addressed, since the rehearing request is being entertained as to the Conservation Council.

On August 11, 1995, American Rivers filed a request for rehearing of the July 12 order, arguing that it should be afforded late intervention, because it did not establish its Northwest Regional Office until 1992; it did not correctly anticipate how the Commission would treat the settlement; late intervention would not disrupt the proceeding or prejudice any other party; and American Rivers' interests are not adequately represented by any other party.

Intervention after a license has been issued can be justified only on extraordinary grounds. 4/ Lack of a local office in the Pacific Northwest is hardly an extraordinary reason for not timely intervening in this proceeding, which began in 1977. As we stated in our July 12 order, American Rivers was responsible for taking appropriate action to protect its interests, and must accept the consequences of its decision not to avail itself of its opportunities to intervene in a timely manner. Because we find that none of American Rivers' arguments for being granted late intervention warrants reversal of our prior ruling, we will deny rehearing and dismiss its request for rehearing of the relicense order.

B. Approval of the Settlement

The parties' settlement consists of an Offer of Settlement (the Settlement) and eight supporting Agreements, including the Wildlife Agreement and the Fisheries Agreement. In our May 16 order, we commended the parties for investing the time and effort required to reach the Settlement, and approved it in its entirety. We then adapted and incorporated into the license those portions of the supporting Agreements that were appropriate for inclusion as license articles. We explained why some Agreement provisions were not appropriate for inclusion in a license, but noted that, as agreements among the parties, those provisions could be carried out and enforced without our involvement.

On rehearing, the parties criticize us for not incorporating into the license, verbatim, the language of every element of every Agreement, suggesting that failure to do so threatens the entire Agreement. Most of this argument is raised in the context of the issue of off-site mitigation, which we discuss below and on which we grant rehearing. That disposition of the principal substantive issue on rehearing substantially moots the more

4/ See, e.g., Weber Basin Water Conservancy District, 50 FERC ¶ 61,409 (1990).

generalized arguments with respect to our acceptance and implementation of the Settlement. We note in any event that, even where we are incorporating a settlement agreement into a license, and intend to implement the agreement in every respect, in order to fulfill our responsibilities under the Federal Power Act (FPA) we must be able to frame license articles in the manner we deem sufficiently clear and concise to allow for effective oversight and enforcement. This principle is not new, and has been applied with no ill effects in other complex and vigorously contested cases that have been resolved by settlements. ^{5/}

C. Wildlife and Recreation Issues

The major focus of the rehearing requests was the license order's determination that, although it approved the entire Settlement, the license itself would not include certain portions of the Wildlife and Recreation Agreements, namely the provisions for the licensee to obtain and manage off-site elk habitat and six off-site recreation areas; fund the Park Service's long-term environmental monitoring within the Ross Lake National Recreation Area, the North Cascades National Park, and the Chelan Recreation Area; and fund the Forest Service's inventory and planning of bald eagle and other wildlife habitat in the Skagit National Recreation River Corridor and the Sauk, Suiattle, and Cascade National Scenic River Corridors. In excluding these activities, the license order noted their distance beyond the current project boundary, their lack of connection to the project and its current impacts, and their location in separate reservations (which could complicate administration of the license).

On rehearing, the parties state that the land to be used for off-site wildlife habitat is private land, and explain how the habitat will support a broad variety of wildlife, not just elk. In addition, some of the enhancement measures could not be sited closer to the project area. The parties also insist that the Settlement could fall apart if all its terms are not included in the license. ^{6/} Seattle notes that the various Agreements were

^{5/} See, e.g., Consumers Power Company, 68 FERC ¶ 61,077 (1994) (order issuing new licenses for 11 projects, subject to the terms of a comprehensive settlement agreement).

^{6/} The rehearing requests do not explain why the measures not included in the license cannot be a matter of a separate agreement among the parties, since the Commission did not disapprove them. We are not aware of any reason to doubt the bona fides of our licensee or any other party to the settlement. In their May 6, 1996 letter (at 3) urging the
(continued...)

developed over years of study and negotiation, and are "interrelated and in many cases interdependent." In a May 6, 1996 letter to the Commissioners, ^{7/} the parties emphasize the importance of the Commission's adoption in the license of every aspect of each Agreement, pointing out that the Settlement was "a formidable task presenting myriad issues without easy answers" and involving "many compromises and trade-offs." ^{8/} The parties stress that, "[b]y specifically providing that the Settlement Agreement is voidable at the option of any party if all of its provisions are not included as license terms, the parties recognized that any adjustments or modifications to the Agreement would upset the delicate balance achieved through negotiations and would frustrate the parties' mutual expectations." ^{2/}

In light of Seattle's agreement to undertake the measures at issue, and the parties' unanimous request on rehearing that these measures be made a part of the license, we have reconsidered the matter. While the measures will constitute enhancement of wildlife resources and recreational opportunities beyond that which we determine is required by the comprehensive development

6/ (...continued)

Commission to grant rehearing, the parties aver that the license's failure to include the Settlement in its entirety:

fails to acknowledge the very real practical enforcement difficulties that result from the Commission's order. No provision was made to enforce the Agreement outside the FERC arena. Moreover, the FPA and Commission regulations provide an expeditious process for enforcement of license terms which will not be available for those settlement provisions rejected by the Commission.

The lack of a provision for private enforcement of the terms of an agreement can be remedied by the parties to the agreement, and is not a per se justification for including a settlement provision in the license.

^{7/} The letter has been placed in the public record of this proceeding.

^{8/} May 6, 1996 letter at 1-2.

^{2/} Id. at 2.

standard of Section 10(a)(1) of the FPA, 10/ nevertheless in this case we do not find the settlement to be inconsistent with Section 10(a)(1). We will therefore include the measures at issue in the license, together with the terms needed to enable the Commission to enforce such measures. 11/

10/ Section 10(a)(1) of the FPA, 16 U.S.C. § 803(a)(1), requires that any project for which the Commission issues a license:

shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat), and for other beneficial public uses, including irrigation, flood control, water supply, and recreational and other purposes

The baseline from which the Commission measures project impacts in relicensing proceedings is the project as it exists and is operated at the expiration of the prior license. See Hydroelectric Relicensing Regulations Under the Federal Power Act, 55 Fed. Reg. 10768 (March 23, 1990), FERC Stats. & Regs. Preambles 1986-1990 ¶ 30,854 at p. 31,401 (May 17, 1989) (Order No. 513). See also City of Tacoma, Washington, 67 FERC ¶ 61,152 at pp. 61,443-44 (1994), reh'g denied, 71 FERC ¶ 61,381 at pp. 62,491-92 (1995).

11/ These measures are included as amendments to license Articles 410 (land acquisition and the funding of monitoring of wildlife resources) and 412 (recreation sites), as set forth in the ordering paragraphs below. Standard license Article 5 requires the licensee to acquire and retain "title in fee or the right to use in perpetuity all non-federal lands necessary or appropriate for the construction, maintenance, and operation of the project." See Standard License Form L-5, 54 FPC 1832, 1834 (1975), incorporated by reference, 71 FERC at p. 61,540, ordering paragraph (D). Article 5 reflects the need for the licensee to have sufficient control over project works and lands to enable the Commission, through the licensee, to carry out its regulatory responsibilities with respect to the project, including enforcement of the license terms. See, e.g., Marsh Valley Hydroelectric Co., 64 FERC ¶ 61,120 (1993).
(continued...)

On rehearing, Interior contends for the first time that the long-term monitoring condition was submitted pursuant to Section 4(e) of the FPA, 12/ as a mandatory condition premised on the project's location on a federal reservation. The project is located almost entirely within the boundaries of the Ross Lake National Recreation Area, and is entirely outside North Cascades National Park.

FPA Section 4(e) provides that the licenses issued by the Commission within any reservation of the United States 13/ "shall be subject to and contain such conditions as the Secretary of the Department under whose supervision such reservation falls shall deem necessary for the adequate protection and utilization of such reservation." In Escondido Mutual Water Co. v. La Jolla Band of Mission Indians, 466 U.S. 765, 781 (1984), the U.S. Supreme Court stated that Section 4(e) "imposes no obligation on the Commission or power on the Secretary [of the Interior] with respect to reservations that may somehow be affected by, but will

11/ (...continued)

The project boundary is to encompass all such lands. See, e.g., 18 C.F.R. 4.51(h)(2). Through our amendments to the license articles, we are requiring Seattle to include the off-site habitat and recreation areas within the project boundary as project "islands." See, e.g., Allegheny Electric Cooperative, et al., 48 FERC ¶ 61,363 (1989) (Ohio River Basin master order) at pp. 62,383-85, reh'g, 51 FERC ¶ 61,268 at p. 61,848 (1990), aff'd, U.S. Department of the Interior v. FERC, 952 F.2d 538, 543, 548 (D.C. Cir. 1992).

While a licensee is free to make arrangements with state or federal resource agencies pursuant to which these agencies carry out license requirements such as managing fish and wildlife programs and recreation areas, the licensee must retain control over these delegated functions so that the Commission, through its licensee, retains its ability to obtain compliance with these requirements. See, e.g., Ohio Power Company, 71 FERC ¶ 61,092 at p. 61,314, n. 40 (1995); Consumers Power Company, 68 FERC ¶ 61,077 at p. 61,377 (1994) (order approving settlement). The license articles reflect this principle.

12/ 16 U.S.C. § 797(e).

13/ Both the Recreation Area and the National Park are federal reservations within the meaning of Section 3(2) of the FPA. See our prior order, 71 FERC at p. 61,535 and n. 29.

contain no part of, the licensed project works." 14/
Therefore, while we are including the entire long-term monitoring condition in the license, it is included pursuant to Section 4(e) only as it applies to monitoring within the Ross Lake National Recreation Area; the balance is included under the comprehensive development standard of FPA Section 10(a)(1).

Finally, consistent with the above-described amendments to the license, pursuant to Section 10(a)(1) of the FPA we will also add a new paragraph to Article 410 with respect to the Forest Service's program for the inventory and monitoring of bald eagle and other wildlife habitat in the Skagit National River corridor and the Sauk, Suiattle, and Cascade National Scenic River corridors. The new paragraph implements section 3.4.4 of the Wildlife Agreement.

D. Fisheries Issues

Washington, the Tribes, and the Conservation Council object to our not having included the Fisheries Settlement Agreement in the license verbatim. We described in the relevant license articles the overall substance of the fisheries requirements, and, as is our practice when dealing with lengthy settlement terms, 15/ provided that the specifics of the Fisheries Settlement Agreement would be in the Project Fishery Resources Plan to be submitted, as modified to accommodate the Commission's enforcement role, pursuant to license Article 401. The parties are also free to create whatever coordinating committees they deem appropriate to implement the provisions of the settlement, including committees contemplated by or established in the Settlement Agreement.

Seattle contends that the definition of fisheries flow insufficiency in the first paragraph of Article 405 is incomplete and should be expanded. We will revise and expand that paragraph with the language provided by Seattle, which appears to be a composite of the language in sections 6.4.2 and 6.4.3 of the

14/ See also Minnesota Power and Light Co., 75 FERC ¶ 61,131 (1996).

15/ See, e.g., the above-referenced Consumers Power Company settlement, discussed at 68 FERC ¶ 61,077 (1994) and implemented through license articles in 11 contemporaneously issued license orders for the 11 individual projects covered by the settlement.

Fisheries Settlement Agreement. 16/ In any event, the license articles were intended to establish the general principles and parameters of the flows, leaving the details to the Project Fishery Resources Plan and the Fisheries Settlement Agreement. The latter remains binding on the parties (including the flows in Gorge bypass 17/) pursuant to its own terms.

E. Miscellaneous Articles

Agriculture requests that we amend Article 408 to include the U.S. Forest Service as one of the recipients of the Fisheries Non-Flow Plan funds for two fisheries non-flow projects, and amend Article 411 to allow the Forest Service to comment and make recommendations on the Project Aviation Marker Plan. We will make those changes as requested. 18/

16/ We will also revise the second paragraph of Article 405, and Article 406, by substituting the members of the Flow Coordinating Committee for the members of the Fisheries Settlement Committee as the entities who expressed an interest in participating in the implementation of these flow requirements. The number of field monitoring studies and surveys to be conducted "in accordance with Section 6.7.3 of the Fisheries Settlement Agreement" as required by Article 407 is best resolved in the Project Fishery Resources Plan. In any event, Article 407's cross-reference to Section 6.7.3 means that the number is determined by Section 6.7.3; there is no inconsistency between the article and the settlement, and therefore no need to amend the article. (See Seattle's request for rehearing at 3.)

17/ See Washington's request for rehearing at 9. Article 405 specifically refers to flows from the Gorge Development and, in that context, specifically incorporates section 6.4 of the Fisheries Settlement Agreement by cross-reference.

18/ The plans associated with license articles 401 through 413, and 415, have all been filed with the Commission, and as of this date three of those plans have been approved. The plan submitted pursuant to Article 411, which was approved on January 22, 1996 (see 74 FERC ¶ 62,026), is a Bald Eagle Monitoring Plan rather than the required Aviation Marker Plan. This allows Seattle to monitor the area to determine whether an aviation marker plan is necessary. An aviation marker plan, or an additional study plan in lieu thereof, must be filed by May 31, 1998. The Expenditures Plan, which implements Article 415, was approved on March 14, 1996 (see (continued...))

Seattle 19/ points out that Articles 409 (Project Erosion Plan) and 413 (Project Visual Quality Plan) both require the greenhouse facility. 20/ We will delete the reference to the greenhouse in Article 413. 21/ Seattle also suggests that item (17) in Article 413 is a subset of item (16), not a separate and distinct requirement. We will combine those two items.

Seattle suggests that Article 410 (Wildlife Plan) leaves room for further clarity with respect to the scope and details of certain undertakings. We agree. The latitude in Article 410 reflects the broad language of the provisions of the Settlement Agreement that it implements. Seattle has now had an opportunity to clarify those matters in the Wildlife Resources Plan it filed pursuant to Article 410. 22/

Seattle also notes that Article 410 failed to list Seattle's obligation, under the Wildlife Agreement, to provide \$20,000 annually to the North Cascades Environmental Learning Center. 23/ We will correct this omission.

18/ (...continued)

74 FERC ¶ 62,134). Finally, the Wildlife Resources Plan filed pursuant to Article 410 was modified and approved on April 2, 1996 (see 75 FERC ¶ 62,003).

19/ All of Seattle's comments and requests with respect to specific articles that are discussed in this section of the order are from pages 3-4 of Seattle's request for rehearing.

20/ Seattle also notes (rehearing request at 2) that the details of the greenhouse referred to in the license order, 71 FERC at p. 61,530, are contained in the Wildlife Plan, not the Visual Quality Plan, and that the \$1,345,000 cost referred to on that page is the cost of the erosion control program by itself and does not include the cost of constructing the greenhouse and implementing the plant propagation program.

21/ We will also delete the reference in Article 409 to the "Recreation Plan," replacing it with the intended reference to the Erosion Plan.

23/ The Wildlife Agreement (at section 3.5) states that these payments are for the Environmental Learning Center to educate the public about the values and issues of wildlife management in the project and North Cascades areas.

(continued...)

Seattle contends that the total of \$1,817,000 for funding measures and programs described in the Settlement Agreement Concerning Cultural Resources (Archeological and Historic Resources) was intended in those agreements to be an estimate, not a fixed amount, and that license Article 414 should be revised to reflect that fact. We will make the requested revision, and will also add inadvertently omitted language (which is contained in similar articles in the license) requiring Seattle to file for Commission approval its plan for funding the measures and programs in question.

The Commission orders:

(A) The requests for rehearing filed by the U.S. Departments of Agriculture, Commerce and the Interior, the Washington Department of Fish and Wildlife, the Sauk-Suiattle, Upper Skagit and Swinomish Indian Tribes, the City of Seattle, and the North Cascades Conservation Council, of the order issued May 16, 1995, in the above-captioned dockets are granted to the extent discussed above and in the ordering paragraphs below, and in all other respects are denied.

(B) Article 405 of the new license for the Skagit River Project, issued May 16, 1995, is amended to read as follows:

Article 405. The Licensee shall release water from the Gorge Development, including where appropriate reduced minimum instream flows, to provide suitable habitat conditions for salmon and steelhead in the Skagit River during years or seasons of exceptionally low flows, in accordance with section 6.4 of the Fisheries Settlement Agreement. Flow insufficiency shall be generally defined as water conditions during a month or months characterized by abnormally low precipitation and sidestream runoff that has the potential to result in a failure to refill Ross Lake by July 31 (as outlined in Section 6.4 of the Fisheries Settlement Agreement), or empty Ross Lake if operations continue to draft at the rate determined by minimum required flows, or if the natural river flow at the Newhalem gage on a day in the month of August is less than 2,300 cfs.

23/ (...continued)

Seattle's obligation to fund the construction, operation, and management of the Environmental Learning Center is set forth in the Recreation and Aesthetics Agreement (at section 3.5.2.1) and is reflected in license Article 412.

Section 6.5 of the Fisheries Settlement Agreement identifies the circumstances for which the effect of the Settlement Agreement shall be limited due to the Licensee's inability to react to or control the flows or operating factors that affect fish. If the flows are modified due to an emergency condition, the Licensee shall notify the Flow Coordinating Committee signatories immediately and file a report with the Commission as soon as possible, but no later than 10 days after each such incident.

(C) The last sentence of Article 406 of the new license is amended to read as follows:

Malfunctions of instruments affecting fish flow requirements for a period longer than 24 hours shall be reported immediately to the Flow Coordinating Committee signatories and a report must be filed with the Commission as soon as possible, but no later than 10 days after each such incident.

(D) The second sentence of the first paragraph of Article 408 of the new license is amended to read as follows:

The Licensee shall make available to the Washington Department of Fish and Wildlife, the Tribes, and the U.S. Forest Service a maximum of \$6,320,000, to implement non-flow measures with objectives, program management, schedules, and funding in accordance with section 7 of the Fisheries Settlement Agreement.

(E) The second sentence of the second paragraph of Article 409 of the new license is amended to read as follows:

The Licensee shall allow a minimum of 30 days for the National Park Service to comment and to make recommendations on the Project Erosion Plan before filing it with the Commission.

(F) The first sentence of Article 410 is amended to read as follows:

Within 180 days of license issuance, the Licensee shall file for Commission approval a plan to implement those portions of the Settlement Agreement Concerning Wildlife (Wildlife Agreement) and of the Wildlife Habitat Protection and Management Plan (Wildlife Plan), filed by the Licensee on April 30, 1991, that provide for the Licensee to make annual payments of \$20,000 for the term of the license to the North Cascades Environmental Learning Center for public education, renovate an historic building (Bunkhouse #10) in the town of

Newhalem to house a research facility, and undertake certain correlative research and monitoring activities.

Article 410 of the license is further amended by adding three new paragraphs at the end of the article, to read as follows: 24/

No later than 180 days after the date of issuance of the order on rehearing of the May 16, 1995 order issuing the new license for the project, the Licensee shall file for Commission approval a plan to implement the land acquisition and habitat enhancement, and the cultural resource evaluations, sections of the Wildlife Agreement (sections 3.2 and 3.3).

The Licensee shall make available annual payments of \$20,000 for the term of the license (including annual licenses) to the National Park Service for the purpose of supporting long-term monitoring of wildlife and environmental resources in the Project Area, the Ross Lake National Recreation Area, and the North Cascades National Park Complex (see section 3.4.3 of the Wildlife Agreement). The Licensee shall file, each year, an annual accounting and funding report that describes what funds were expended for this purpose during the past year and how those funds were used. The Commission reserves the right, after notice and opportunity for hearing, to modify this funding arrangement, including ordering a suspension or cessation of the funding, should it be necessary or appropriate.

The Licensee shall make available payments totalling \$90,000 to the U.S. Forest Service for the purpose of inventory and monitoring of bald eagle and other wildlife habitat in the Skagit National Recreation River corridor and the Sauk, Suiattle, and Cascade National Scenic River corridor, pursuant to the following schedule. (1) The Licensee shall make payments of \$20,000 in each of the first two years of the license term, to be used for developing the inventory and a plan for monitoring and meeting the needs of bald eagles. (2) Thereafter, the Licensee shall make periodic payments of \$10,000 every five

24/ Inasmuch as Seattle has already filed its expenditure plan, and that plan has already been approved, Seattle will need to file a request for approval of additional expenditures consistent with this amendment of Article 410.

years for the balance of the license term (thus, such periodic payments shall be made in each of license years 7, 12, 17, 22 and 27), to be used for updating the bald eagle plan and monitoring its performance. The Licensee shall continue to make periodic payments of \$10,000 during any ensuing five-year period in which the project is operated pursuant to annual licenses. (See section 3.4.4 of the Wildlife Agreement.) The Licensee shall file, during the third year of the license term and every five years thereafter, an accounting and funding report that describes what funds were expended for this purpose during the reporting period and how those funds were used. The Commission reserves the right, after notice and opportunity for hearing, to modify this funding arrangement, including ordering a suspension or cessation of the funding, should it be necessary or appropriate.

(G) The second sentence of the second paragraph of Article 411 of the new license is amended to read as follows: 25/

The licensee shall allow a minimum of 30 days for the Fish and Wildlife Service and the U.S. Forest Service to comment and make recommendations on the Project Marker Plan before filing it with the Commission.

(H) Article 412 of the license is amended by adding a new paragraph, to read as follows:

The enhancement measures shall, in accordance with section 3.5 of the Settlement Agreement on Recreation and Aesthetics, also include: (16) funding of the rehabilitation of the Marblemount Boat Access Site, up to a maximum of \$165,000; (17) funding of new facilities at the Black Peak Overlook Site, up to a maximum of \$250,000; (18) funding of new facilities at the Rocky Creek River Access Site, up to a maximum of \$250,000; (19) funding of new facilities at the Steelhead Park Site, up to a maximum of \$125,000; (20) funding of new facilities at the Lower Sauk River Access Site, up to a maximum of \$250,000; and (21) funding of new facilities at the Suitttle River Boat Access Site, up to a maximum of \$250,000. No

25/ This consultation requirement can be satisfied by undertaking such consultation prior to the filing of the Aviation Marker Plan or the additional study plan, one or the other of which must be filed no later than May 31, 1998. See 74 FERC ¶ 62,026 (1996).

later than 180 days after the date of issuance of the order on rehearing of the May 16, 1995 order issuing the new license for the project, the Licensee shall file for Commission approval an amendment to the Project Recreation Plan that includes, at a minimum, schedules, descriptions, project "islands," and funding proposals for these enhancement measures. The amendment shall be prepared and filed pursuant to the same consultation procedures applicable to the preparation and filing of the Project Recreation Plan, as set forth in the previous paragraph of this article.

(I) The first paragraph of Article 413 of the new license is amended to read as follows:

Within 180 days of license issuance, the Licensee shall file for Commission approval a Project Visual Quality Plan implementing the following provisions of the Settlement Agreement on Recreation and Aesthetics and the Report on Aesthetics filed by the Licensee on April 30, 1991. The Project Visual Quality Plan shall, in accordance with section 4.2 of the Settlement Agreement on Recreation and Aesthetics, include at a minimum implementation schedules, descriptions, and provisions for requiring funding mechanisms for the following: (1) filling the Ross Lake Reservoir as early as possible after April 15 and keeping it full through Labor Day weekend consistent with other resource management constraints; (2) painting project transmission line towers a less visually contrasting color; (3) painting the two surge tanks above the Diablo and Gorge powerhouses a less visually contrasting color; (4) painting the structural steel bridge on the Gorge Dam access road a less visually contrasting color; (5) redesigning or modifying the Ross Dam Broome Gate Shed to decrease its contrast; (6) removing the Diablo person lift; (7) providing high angle cut-off shielding for all exterior lighting and/or replace the mercury or low intensity sodium exterior lamps with high-intensity sodium lamps at the three powerhouses to the extent consistent with safe project operations; (8) replacing shiny, high contrast or reflective galvanized or aluminum roofing/siding on buildings in Newhalem and Diablo with more visually compatible material; (9) avoiding increasing the contrast of existing project facilities; (10) improving the visual quality of Newhalem and Diablo towns; (11) improving the visual quality of Engineering Row in Newhalem, including removal of three storage buildings; (12) developing a parking area on SR 20 within the town of Newhalem; (13) providing adequate parking for employees and visitors at the powerhouse and at the Ladder Creek Falls Trail; (14) improving the visual quality of the Town of Diablo and the Diablo Visitor Center; and

(15) maintaining project rights-of-way for visual quality purposes, including applying a range of vegetation management prescriptions to reduce their visual impacts.

(J) The first sentence of the second paragraph of Article 414 is amended to read as follows:

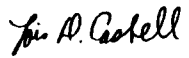
The Licensee shall file for Commission approval a plan to provide an estimated \$1,817,000 for the duration of the license, as called for in the agreement regarding archaeological and historic resources; \$1,316,669 as called for in the agreements with the Upper Skagit Tribe, the Swinomish Indian Tribal Community, and the Sauk-Suiattle Tribe regarding traditional Cultural Properties; and \$600,000 as called for in the agreement with the Nlaka'pamux Nation.

(K) Article 416 is amended by adding two new sentences, to read as follows:

No later than 90 days after the date of issuance of the order on rehearing of the May 16, 1995 order issuing the new license for the project, the Licensee shall file for Commission approval revised Exhibit K drawings that include all project lands and all off-site project islands, as referred to in Articles 410 and 412 (as those articles were amended in the order on rehearing of the May 16, 1995 order) and as shown in figure 3-1 of the Settlement Agreement on Recreation and Aesthetics. With the Exhibit K drawings the Licensee shall also file an acreage summary statement that describes in detail the number of acres of federal land that the project occupies.

By the Commission.

(S E A L)


Lois D. Cashell,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Project No. 553-031

-2-

City of Seattle, Washington)

Project No. 553-031

ORDER MODIFYING AND APPROVING SOIL EROSION CONTROL PLAN
(Issued May 15, 1996)

On November 13, 1995, the City of Seattle, licensee for the Skagit Project, Skagit County, Washington, filed a project soil erosion control plan (PSECP), pursuant to article 409 of the Order Accepting Settlement Agreement, Issuing New License, and Terminating Proceeding, issued May 16, 1995.

Article 409 requires the licensee to file a plan to implement those portions of the Settlement Agreement concerning erosion control, and the erosion control plan, filed by the licensee on April 30, 1991, which concerns 37 project-related recreation and project facility sites and 18 project-related road sites. The PSECP is to include: (1) descriptions of the erosion control sites, (2) descriptions and schedules for implementing passive and active erosion control measures, (3) a schedule for constructing the greenhouse facilities, (4) a description and implementation schedule of a plant propagation program for the primary purpose of supplying plant stock for erosion control, and (5) provisions for funding the PSECP. The licensee is to prepare the PSECP after consultation with the U.S. Department of the Interior, National Park Service (NPS).

BACKGROUND

A. PSECP

1. Sites Specified in the Erosion Control Plan

a. Shoreline Sites

The NPS will have the lead role for all erosion control work under the settlement agreement except at project road sites. As lead, the NPS will be responsible for all aspects of erosion control work, including planning, design, engineering, permitting, site preparation, materials, labor, contracting construction, vegetative planting, and operation and maintenance. In addition, the NPS will do erosion control work at all new sites. ^{1/}

^{1/} The implementation schedule will be subject to modification through the mutual agreement of the licensee and NPS.

The NPS will monitor erosion at sites where active and passive mitigation measures have been installed. Monitoring will include: (a) initial cross section surveys, (b) placement of rebar stakes, (c) photographic documentation, and (d) periodic and intermittent resurveys based on first-year information. The NPS will monitor erosion at critical wildlife habitat sites yearly. The NPS will also survey erosion annually along the transmission line corridor and the steep slopes cut by Washington State's Highway Route 20. ^{2/}

b. Road Sites

The licensee will be the lead for all erosion control work other than biotechnical slope protection measures at the project road sites specified in the erosion control plan and at new project road sites. The licensee's responsibilities at the biotechnical protection sites will include grading and site preparation for vegetation work that will be done by the NPS. The NPS will be the lead for biotechnical slope protection measures (vegetation measures, including seeding) at the project road sites and at any new project road sites. The NPS will provide technical assistance to the licensee in erosion control work at the sites for which the licensee has responsibility.

2. New Sites and Maintenance

The NPS will maintain installed erosion control measures, implement erosion control at new sites during the license term, and complete the erosion control work at the sites specified in the erosion control plan.

3. Plant Propagation and Revegetation Program

The plant propagation and revegetation program will: (i) revegetate eroded sites within the project; (ii) revegetate overused recreational sites; and (iii) maintain the viability of the plants on revegetated sites.

The program will be a cooperative effort between the licensee and the NPS. Generally, the licensee will be responsible for raising plants in the project's horticultural facilities for use in revegetating sites in the project area. The NPS will have lead responsibility for

^{2/} The transmission line corridor and Washington State's Highway Route 20 are located along the project's shoreline.

site assessment, field collection of seed, and the transplanting of the plants.

The exact number of the plants to be produced will be determined by the needs of the sites which are selected for treatment. 3/ Plants may need to be held for up to three years before transplanting and the licensee will hold and maintain the plants.

4. Greenhouse Construction

The licensee will construct greenhouse facilities and institute a plant propagation program for the primary purpose of supplying plant stock for erosion control sites. The licensee's goal is to complete the greenhouse facilities and have the plant propagation program fully operational by the end of the third year from the issuance date of the project's license.

The filed PSECP also includes a description of all funding, the proposed use for the funds, and schedule for fund disbursement. The funding portions of this filing were approved by the Order Approving Expenditures, issued March 14, 1996.4/

Pursuant to article 409 and section 6.4 of the Settlement Agreement, the licensee will file the NPS's annual accounting and funding report with the Commission.

AGENCY CONSULTATION

Comments received from the Washington Department of Fish and Wildlife, the U.S. Forest Service, NPS, and American Rivers dated October 2, 17, 19, and 23, 1995, respectively, contained general comments expressing their belief that the order relicensing the project should have contained the entire Settlement Agreement. In general, the comments were not specific to the proposed PSECP. The NPS specifically stated that it had no comment concerning the PSECP.

DISCUSSION

The Settlement Agreement sets up a partnership between the licensee and the NPS on how the erosion control measures of the PSECP will be implemented, completed, and maintained.

3/ Discussions with the NPS indicate that the production of 3,500 plants annually would be more than sufficient to meet their needs for erosion control plantings.

4/ See 74 FERC ¶ 62,134 (1996).

Specifically, the NPS is provided with the lead role in all erosion control work under the Settlement Agreement except at project road sites. Even though the Settlement Agreement provides the NPS with the lead role for execution of the PSECP, the licensee bears the final responsibility to implement, complete, and maintain the erosion control measures of the plan.

The PSECP does not specify the date the licensee will file, with the Commission, the NPS's annual accounting and funding reports. Therefore, May 16 of each year (the anniversary date of the license) is the date set by this order that the licensee will file, with the Commission, the NPS's annual accounting and funding reports, pursuant to license article 409 and section 6.4 of the Settlement Agreement.

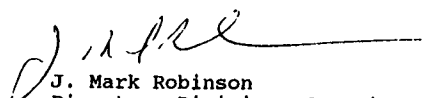
The proposed PSECP, filed November 13, 1995, should control erosion and slope instability and minimize the quantity of sediment resulting from operation of the Skagit River Project. Specifically, sites where erosion is an immediate risk to project facilities, recreational sites, or biological resources have been given high priority for erosion control work and will be protected. This PSECP should be approved, as modified below.

The Director orders:

(A) The project soil erosion control plan filed on November 13, 1995, as modified by paragraph (B), is approved.

(B) The licensee shall file, by May 16 of each year, with the Commission, the National Park Service's annual accounting and funding reports as specified in the project's soil erosion control plan and pursuant to license article 409 and section 6.4 of the Settlement Agreement.

(C) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. §385.713.


J. Mark Robinson
Director, Division of Project
Compliance and Administration

UNITED STATES OF AMERICA 71 FERC 61,159
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Elizabeth Anne Moler, Chair;
Vicky A. Bailey, James J. Hoecker,
William L. Massey, and Donald F. Santa, Jr.

City of Seattle, Washington) Project No. 553-005
U.S. Department of the Interior) Docket No. EL78-36-000

ORDER ACCEPTING SETTLEMENT AGREEMENT, ISSUING NEW
LICENSE, AND TERMINATING PROCEEDING

(Issued May 16, 1995)

The City of Seattle, Washington (Seattle), filed an application for a new license, 1/ pursuant to Sections 4(e) and 15 of the Federal Power Act (FPA), 2/ authorizing the continued operation and maintenance of the 689.4 megawatt (MW) Skagit River Project, located on the Skagit River 3/ in Snohomish, Skagit, and Whatcom Counties, Washington. 4/ For the reasons discussed below, we approve the settlement, incorporating those aspects of it over which we have jurisdiction into the new license issued to Seattle.

On April 30, 1991, Seattle filed an Offer of Settlement and eight supporting Settlement Agreements, followed by the filing of two additional Settlement Agreements on September 17, 1993, regarding the application filed in this proceeding. For ease of reference, the filing in its entirety will be referred to as the Settlement Agreement. The individual, supporting settlement

1/ Seattle was issued a 50-year license for the Skagit River Project on October 28, 1927. See Eighth Annual Report of the Federal Power Commission (1928) at 190. Since the expiration of that license in 1977, annual licenses have been issued, with the terms and conditions of the original license, authorizing Seattle to continue project operations pending disposition of its application. The application for a new license was filed in 1977; thereafter, the parties commenced negotiating their settlement.

2/ 16 U.S.C. 807.

3/ The Skagit River is a navigable waterway of the United States. See Seventh Annual Report of the Federal Power Commission (1927) at 76.

4/ Seattle is not proposing to add any new capacity or construct any new facilities.

RECEIVED

MAY 19 1995

WDFW HABITAT PROGRAM

UNITED STATES OF AMERICA 71 FERC 61,159
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Elizabeth Anne Moler, Chair,
Vicky A. Bailey, James J. Hoecker,
William L. Massey, and Donald F. Santa, Jr.

City of Seattle, Washington) Project No. 553-005
U.S. Department of the Interior) Docket No. EL78-36-000

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LICENSE, AND TERMINATING PROCEEDING

(Issued May 16, 1995)

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3/ The Skagit River is a navigable waterway of the United States. See Seventh Annual Report of the Federal Power Commission (1927) at 76.

4/ Seattle is not proposing to add any new capacity or construct any new facilities.

agreements will be designated according to the subject of the pertinent settlement agreement (e.g., Wildlife Agreement).

The Settlement Agreement purports to resolve all issues related to project operation, fisheries, wildlife, recreation and aesthetics, erosion control, archaeological and historic resources, and traditional cultural properties. We will incorporate into Seattle's new license all the Settlement provisions which relate to the Skagit River Project, as discussed more fully below.

By notice issued on September 7, 1978, the Commission instituted a proceeding in Docket No. EL78-36 in response to a recommendation by the Department of the Interior for certain changes in project operation. 5/ The purpose of the proceeding was to examine the effects of the project's flow regime on the Skagit River's fisheries resource. On May 12, 1981, the Commission approved an Interim Agreement in that docket which established certain flow regimes for the Skagit River Project and required Seattle to perform further fishery studies. 6/ In the Settlement Agreement, the parties request that the Commission dismiss the proceeding in Docket No. EL78-36. The Settlement Agreement includes and supersedes the Interim Agreement reached in Docket No. EL78-36. Since the issues under review in that docket are resolved by the Settlement Agreement and the issuance of this license, we will terminate the proceeding in Docket No. EL78-36.

I. PROJECT DESCRIPTION

The Skagit River Project is located between river miles 127 and 94 on the Skagit River in Snohomish, Skagit, and Whatcom Counties, near the towns of Diablo, Newhalem, Marblemount, and Rockport, Washington, and approximately 100 miles from the City of Seattle. The project consists of three developments with a total installed capacity of 689.4 MW. The current project boundary encompasses 19,209.25 acres (excluding the project

5/ All the intervenors in Docket No. EL78-36 are signatories to the Settlement Agreement.

6/ See Order Conditionally Approving Interim Offer of Settlement, 15 FERC 61,144 (1981); Order Declaring Interim Settlement Effective and Partially Releasing Condition, 16 FERC 61,044 (1981).

transmission line corridor). 7/ With the exception of the transmission lines, the project is located entirely within the outer boundaries of the 117,524-acre Ross Lake National Recreation Area (Recreation Area), which is administered by the Department of the Interior's National Park Service. 8/ The Recreation Area is surrounded by lands of the North Cascades National Park, and the Mount Baker-Snoqualmie, Okanogan, and Wenatchee National Forests. Project transmission lines cross a portion of the Mt. Baker National Forest and a segment of the Skagit River within the national Wild and Scenic River System.

The three developments comprising Project No. 553 are Ross, Diablo, and Gorge. The Ross Development consists of a concrete arch dam, rising 540 feet from bedrock to crest; an 11,680-acre

7/ Exhibit F of the licensee's application indicates that the project includes 19,304.75 acres of federal lands (both project works and transmission lines). The licensee's Report on Aesthetics, filed with the Settlement Agreement, lists 19,266 acres within the Recreation Area. The application states, in Exhibit W, that only 168.312 acres are private lands (124.75 acres in Newhalem, and 43.56 acres in Diablo). This license requires Seattle to file an account of the acreage in the project, with a precise breakdown of the ownership of all lands (federal or private).

8/ The project predates the Park. The North Cascades Park Act of 1968, Pub. L. No. 90-554, 82 Stat. 926, established the North Cascades National Park, the Lake Chelan National Recreation Area, and the Ross Lake National Recreation Area. The Ross Lake National Recreation Area was set aside "to provide for the public outdoor recreation use and enjoyment of portions of the Skagit River, Ross, Diablo, and Gorge Lakes together with the surrounding lands, and for the conservation of scenic, scientific, historic, and other values contributing to the public enjoyment of such lands and waters." 82 Stat. 927. Section 505 of the Act, 82 Stat. 930, amended by 102 Stat. 3963, provides:

[n]othing in this Act shall be construed to supersede, repeal, modify, or impair the jurisdiction of the Federal Power Commission [predecessor to FERC] under the Federal Power Act (41 Stat. 1063), as amended (16 U.S.C. 791a et seq.), in the lands and waters within the Skagit River Hydroelectric Project, Federal Energy and [sic] Regulatory Commission Project 553, ...; and existing hydrologic monitoring stations necessary for the proper operation of the hydroelectric projects listed herein.

reservoir with a total storage capacity of 1,435,000 acre-feet; two 26-foot-diameter power tunnels, 1,800 feet long and 1,634 feet long; and a power plant with four generating units having a combined nameplate capacity of 360 MW.

The Diablo Development consists of a concrete arch dam rising 389 feet from bedrock to crest; a 770-acre reservoir used primarily for reregulation; a 2,000-foot-long tunnel and two inclined steel pipelines which convey water from the reservoir to the power plant; and a power plant containing four generating units with a combined nameplate capacity of approximately 122.4 MW.

The Gorge Development consists of a combination concrete arch and gravity diversion dam rising 300 feet from bedrock to the crest; a reservoir with a capacity of 8,500 acre-feet; a 20.5-foot-diameter, 11,000-foot-long penstock which conveys water to the power plant and creates a 2.7-mile-long bypassed reach; and a power plant containing four generating units with a combined nameplate capacity of approximately 207 MW.

The Skagit River Project electric transmission system consists of several 230 kilovolt circuits on double-circuit steel towers. The transmission lines terminate a few miles northeast of Seattle. 9/

II. BACKGROUND

In response to the published notice of the application, 10/ timely, unopposed motions to intervene were filed by the Swinomish Indian Tribal Community, the Upper Skagit Tribe, and the Sauk-Suiattle Tribe, jointly (the Tribes); 11/ the National Marine Fisheries Service (NMFS); the Washington State Department of Game (Washington Game); the North Cascades Conservation Council (Conservation Council); the Washington State Department of Fisheries (Washington Fisheries); the Secretary of the Interior, National Park Service (Park Service) and Fish and Wildlife Service (FWS); the Department of Ecology, Washington State (Department of Ecology); and the U.S. Department of Agriculture, Forest Service (Forest Service). The Commission issued a notice granting these motions to intervene on May 15, 1979. The Nlaka'pamux Nation of British Columbia, Canada, filed a late motion to intervene on November 7, 1990; the Commission

9/ Ordering paragraph (B)(2) of this order contains a more detailed project description.

10/ 44 Fed. Reg. 3070 (1979).

11/ These are United States Native American tribes.

issued a notice granting the late intervention on June 27, 1991.

A draft Environmental Assessment (EA) for this project was issued on March 4, 1994. Comments on the draft EA were filed by Seattle, the Park Service, the U.S. Army Corps of Engineers, the Conservation Council, the Nlaka'pamux Nation, NMFS, the Tribes, the North Cascades Institute, and FWS. These comments were considered in preparing the final EA for this project, which is attached to this license order. Background information, analysis of impacts, and the basis of a finding of no significant impact on the environment are contained in the EA. The Commission's staff also prepared a Safety and Design Assessment, which is available in the Commission's public file for this project. All comments received from interested agencies and individuals have been fully considered in determining whether, or under what conditions, to issue this license.

WDFW also
commented, on
4/20/94

On February 24, 1995, the Sto:lo Nation of British Columbia, Canada, filed a motion to intervene which states, without elaboration, that the Sto:lo Nation's traditional territory extended below the 49th parallel prior to the establishment of that border. 12/ We note that this proceeding began in 1977 when Seattle filed its application for a new license, and that the Settlement Agreement discussed in this order was filed in 1991 and 1993. Various opportunities for intervention or comment have arisen throughout the proceeding, and neither the Sto:lo Nation nor either of the two tribal organizations (consisting of 21 Bands) of which it is comprised have moved to participate in the proceeding. The Sto:lo Nation states that it did not intervene sooner because neither of its tribal organizations kept close tabs on the developments in the Ross Lake area. However, to allow intervention at this advanced stage of the proceeding would delay and disrupt the proceeding. In any event, to the extent the Sto:lo Nation is concerned with the preservation of traditional cultural resources in the project vicinity, the license issued by this order requires studies to inventory traditional cultural properties as well as analysis of any impact of continued project operation on those traditional cultural properties and implementation of methods to mitigate any such impact. For the above reasons, we will deny the Sto:lo Nation's late motion to intervene.

III. DESCRIPTION OF THE SETTLEMENT AGREEMENT

The Settlement Agreement consists of the following documents, with supporting plans and reports. The parties that

12/ The record does not indicate whether the Sto:lo Nation served copies of this motion to intervene on each person on the official service list.

have joined in each agreement with Seattle are listed following the title of the pertinent agreement.

*No explanation
of name
change* →

- (1) Offer of Settlement:
the Park Service, FWS, the U.S. Bureau of Indian Affairs, the Forest Service, NMFS, the Tribes, the Nlaka'pamux Nation, Washington Game, the Conservation Council, and Washington Fisheries.
- (2) Fisheries Settlement Agreement:
the Park Service, FWS, the Bureau of Indian Affairs, the Forest Service, NMFS, the Tribes; Washington Fisheries, Washington Department of Wildlife (Washington Wildlife); and the Conservation Council.
- (3) Settlement Agreement on Recreation and Aesthetics:
the Park Service, the Forest Service, the Tribes, and the Conservation Council.
- (4) Settlement Agreement Concerning Erosion Control:
the Park Service.
- (5) Settlement Agreement Concerning Wildlife:
Washington Wildlife, the Park Service, the Bureau of Indian Affairs, FWS, the Forest Service, the Tribes, and the Conservation Council.
- (6) Settlement Agreement Concerning Cultural Resources (Archaeological and Historic Resources):
the Park Service and the Tribes.
- (7) Settlement Agreement Concerning Cultural Resources (Archaeological Resources):
the Nlaka'pamux Nation.
- (8) Settlement Agreement Concerning Traditional Cultural Properties:
the Upper Skagit Tribe.
- (9) Settlement Agreement Concerning Traditional Cultural Properties:
the Sauk-Suiattle Tribe.
- (10) Settlement Agreement Concerning Traditional Cultural Properties:
the Swinomish Indian Tribal Community.
- (11) Settlement Agreement Concerning Traditional Cultural Properties:
the Nlaka'pamux Nation.

Because no new hydropower facilities will be constructed, the measures in the agreement deal with operational considerations (e.g., fill and flow plans), operational impacts (e.g., erosion protection), enhancement (e.g., recreational facilities), and support for cultural practices.

A. Fisheries

The Fisheries Settlement Agreement incorporates the Anadromous Fish Flow Plan and the Anadromous and Resident Fish Non-Flow Plan and establishes Seattle's obligations relating to fishery resources affected by the project, including numerous provisions to protect resident and migratory fish species. These provisions include, but are not limited to, a filling schedule for Ross Lake reservoir, flows downstream of Gorge powerhouse, flow releases and limits to protect salmon and steelhead spawning and development, requirements for dry water years, advance scheduling of hourly generation, field monitoring, and nonflow measures for steelhead production, chinook salmon research, chum salmon habitat, sediment reduction, and trout protection and production.

The Anadromous Fish Flow Plan is intended to mitigate the impacts of daily and seasonal downstream fluctuations. However, even with the complete implementation of the Anadromous Fish Flow Plan, some level of these impacts would continue to occur. Fish will still be exposed to daily and seasonal flow fluctuations, which will result in the continuation of chronic fry stranding at a reduced, unknown level. In addition, the configuration and operation of the project has rendered some formerly productive fish habitat inaccessible. The Anadromous and Resident Non-flow Plan is specifically intended to address these residual impacts and habitat losses. Seattle's expenditures to accomplish the nonflow plan total \$6,320,000 over the term of the license.

B. Recreation and Aesthetics

The Settlement Agreement Concerning Recreation and Aesthetics incorporates the Skagit Project Recreation Plan and the Skagit Project Visual Quality Mitigation Plan, and establishes Seattle's obligations relating to recreation and the visual quality of project facilities as currently constructed.

Under the Recreation Agreement, Seattle will continue to provide recreation opportunities such as tours, contributions, and services; replace or modify boat ramps, docks, and access sites; improve the Newhalem visitor contact station; upgrade a picnic site; provide funding for a number of purposes (including a water distribution system); provide an environmental learning center, overlook sites, handicapped access, recreational trails, boat access, picnic sites, park facilities, and recreation needs assessments; promote coordination of participants; and provide

operation and maintenance costs at Forest Service and Park Service facilities in the area. The evaluation area for the Recreation Plan covered an area well beyond the current project boundary, and includes the drainage of the Skagit upstream of Rockport; the tributary Cascade, Suiattle, and lower Sauk River drainages; the North Cascades National Scenic Highway area; and a narrow corridor along the lower Skagit River from Rockport to Burlington. Proposed licensee expenditures to accomplish these goals would total approximately \$17,000,000 over the term of the license.

Under the Skagit Project Visual Quality Mitigation Plan, Seattle will take various actions, including maintenance of water levels in Ross Lake reservoir, painting, modifying or removing certain project structures, changing outdoor lighting systems, and consulting with the Park Service before undertaking certain construction or maintenance activities. To improve the visual quality of the Diablo and Newhalem townsites, Seattle will screen certain views, revegetate portions of the shoreline area around Gorge Lake reservoir and set them aside for public use, enhance existing planting islands, remove or relocate buildings, develop a new project greenhouse, improve parking areas, and develop an overlook and information center across from the Gorge powerhouse. To manage visual resources in and around transmission-line rights-of-way, Seattle will implement prescriptions to manage them, including specific measures for problem areas that have been identified. Seattle's expenditures to accomplish these goals total approximately \$7,500,000 over the term of the license.

C. Erosion Control

The Settlement Agreement Concerning Erosion Control incorporates the Erosion Control Plan. Thirty-seven sites along the reservoir shoreline and eighteen road sites have been identified in the Settlement Agreement for priority erosion control measures. These measures include (1) active erosion control measures on shorelines (placement of control structures and vegetation to halt or greatly reduce erosion) to maintain the natural and wilderness conditions of the Skagit River Project area; and (2) passive measures (monitoring to obtain additional information on the processes and rates of erosion). Under the Erosion Agreement, the Park Service will have the lead role and will be responsible for all aspects of erosion control work, except at Project road sites.

In addition, other erosion control work will be performed at sites identified during the license period. Seattle will also fund and implement construction of greenhouse facilities and institution of a plant propagation program to supply stock for erosion control sites. Seattle's expenditures to accomplish these goals total \$1,345,000 over the license period.

D. Wildlife,

Seattle filed a Settlement Agreement Concerning Wildlife (Wildlife Agreement) and a Wildlife Habitat Protection and Management Plan (Wildlife Plan) with the Offer of Settlement. The documents contemplated, among other things, that Seattle acquire lands located outside the Recreation Area in the downstream Skagit River area and near the South Fork of the Nooksack River for wildlife habitat protection and enhancement; 13/ provide financial support for monitoring and information-gathering to be performed by the Park Service and the Forest Service; provide a research facility at the project and correlative research and monitoring programs; establish a Wildlife Research Advisory Committee; establish a Wildlife Management Review Committee; and provide annual contributions to the North Cascades Environmental Learning Center.

Seattle's expenditures under this agreement total \$19,940,000, including up to \$17,000,000 for land acquisition and habitat manipulation and enhancement; \$20,000 for cultural resource reconnaissance surveys on any land to be disturbed by wildlife habitat manipulations; \$2,920,000 for research, including a research building and equipment (\$130,000); research study funding (\$1,500,000 total in annual payments); long-term environmental monitoring by the Park Service in Recreation Area (\$600,000); bald eagle inventory and planning by the Forest Service (\$90,000); and \$600,000 for education (as annual payments of \$20,000 to the North Cascades Environmental Learning Center).

E. Cultural Resources and Traditional Cultural Resources

1. Cultural Resources -- Archaeological and Historic

Seattle submitted a Settlement Agreement Concerning Cultural Resources -- Archaeological and Historic Resources, 14/ followed by a Settlement Agreement Concerning Cultural Resources -- Archaeological Resources 15/ (jointly referred to as the Cultural Resources Agreement). The Cultural Resources Agreement addresses the cultural resources affected by the Skagit River Project and provides that the licensee make available an

13/ The Settlement Agreement states that it is necessary to restore habitat for elk that has been and continues to be depleted by the logging industry.

14/ This document represents the agreement reached between Seattle, the Park Service, and the Tribes.

15/ This agreement serves to establish the Nlaka'pamux Nation's concurrence with the Cultural Resources Agreement and join the Nlaka'pamux Nation as a party.

estimated total amount of \$1,817,000 for the purpose of funding the measures and programs. Of that amount, \$352,000 is for historic resources, and an estimated \$1,465,000 is for archaeological resources.

Under the Cultural Resources Agreement, Seattle will fund field testing and evaluation of those archaeological sites which have the potential for being found eligible for listing on the National Register of Historic Places. Seattle will provide a total estimated amount of \$1,465,000 to implement these measures and any mitigation and management programs required as a result of the information collected during field testing and evaluation. The Cultural Resources Agreement also provides that Seattle make available \$352,000 for the purpose of interpreting and documenting historic building and engineering resources and providing protection, maintenance, and mitigation related to those historic resources.

2. Traditional Cultural Resources

Seattle entered into individual Settlement Agreements Concerning Traditional Cultural Properties with the Upper Skagit Tribe, the Swinomish Indian Tribal Community, the Sauk-Suiattle Tribe, and the Nlaka'pamux Nation. These Agreements provide for the completion of studies needed to inventory certain traditional cultural properties and to analyze the potential impacts of continued project operation on those traditional cultural properties. The agreements between Seattle and the Tribes provide for funding in the amount of \$1,316,669 for each group. The agreement between Seattle and the Nlaka'pamux Nation provides for funding in the total amount of \$600,000.

3. Summary

Memoranda of Agreement were entered into by the licensee, the Washington State Historic Preservation Officer, the Advisory Council on Historic Preservation, the Park Service, the Tribes, the Nlaka'pamux Nation, and Commission staff. These agreements call for the fulfillment of earlier memoranda of agreement between the parties regarding historic and archaeological resources (the provisions of which are incorporated into the Cultural Resources Agreement), as well as the provisions of the Cultural Resources Agreement and the Traditional Cultural Properties Agreements.

IV. ENVIRONMENTAL ANALYSIS

The environmental analysis of Seattle's proposal concentrated on various resources, including fisheries, vegetation and wildlife, visual resources, cultural resources, and land use and recreation. Because these resources are

frequently affected by slope stability, geology and soils were also considered.

Implementation or continuation by Seattle of the Settlement Agreement provisions will produce the following effects. Flow releases from the project will continue to be managed to improve conditions for salmon and steelhead spawning, redds, 16/ and fry 17/ in the river. Additional nonflow measures will be implemented for enhanced steelhead production, chinook salmon research, fish habitat development, sediment reduction, and trout protection and production. A short reach of the river below Gorge dam will continue to be dewatered, and the slight detriment to resident and anadromous fish will persist. The reservoirs will continue to occupy what was formerly terrestrial wildlife habitat. Wildlife habitat in the basin will be improved and enhanced through habitat acquisition and improvement. Recreational facilities associated with the project will be improved, including erosion control measures. Visual quality will be enhanced through repair of facilities, screening, and revegetation. Archaeologic and historic resources will be protected through refurbishment of facilities, education, interpretation, and information-gathering. Traditional cultural properties will be inventoried, protected, and enhanced.

Based on the environmental analysis conducted in this proceeding, the Commission concludes that issuance of a new license for the Skagit River Project, with the inclusion of the recommended environmental enhancements discussed below, will not constitute a major federal action significantly affecting the quality of the human environment.

V. DISCUSSION

The Settlement Agreement filed by the parties contains the resolution of a wide range of complex and conflicting areas of interest to the various parties, and is the product of several years of negotiations among these parties. We encourage settlements in proceedings before us, and we commend the parties to the Settlement for investing the time and effort required to reach this comprehensive agreement.

16/ Redds are defined as the gravel nests in which salmon and steelhead lay their eggs.

17/ Fry are juvenile fish that have emerged from the gravel nests and are ready to feed.

The Commission may approve all or part of the provisions of an uncontested settlement 18/ upon a finding that the agreement is fair, reasonable, and in the public interest. 19/ The Commission may prescribe license requirements to ensure its ability to monitor and, if necessary, enforce the licensee's compliance with the provisions included as license requirements. After review of the proffered Settlement Agreement and the record in this proceeding, we have determined that we will accept the Agreement as in the public interest and will include in a new license for Project No. 553 the provisions which are appropriate for adoption as license conditions.

The Settlement Agreement includes certain provisions that require action by parties other than the licensee or deal with matters which are beyond the Commission's role to enforce, such as procedures for consultation or dispute resolution among the parties and the procedures to be followed by committees (comprised of various parties to the agreement) which will review implementation of the agreement and direct minor changes in the prescribed measures and activities. Under certain other provisions, Seattle will perform various enhancement measures that are far removed from and unrelated to the project and that are more appropriately monitored and enforced by local entities or other federal agencies. We understand that these far-ranging agreements are essential elements of this very complex and delicate settlement. We congratulate the parties for their creativity in addressing a wide range of issues not normally addressed in a relicensing case and for their success in forming a consensus on these issues. We will support the settlement, but the parties certainly recognize that certain aspects of it are

18/ Initially, the Nlaka'pamux Nation filed objections to the Offer of Settlement; however, the issues raised in that filing have been resolved as reflected in the Settlement Agreement Concerning Cultural Resources: Archaeological Resources, and the Settlement Agreement Concerning Traditional Cultural Properties of the Nlaka'pamux Nation. The Settlement Agreement was not contested by any other party.

19/ 18 C.F.R. 385.602(g)(3). See also Public Utility District No. 2 of Grant County, Washington, et al., 45 FERC 61,401 (1988); Consumers Power Company, 68 FERC 61,077 (1994).

simply beyond the Commission's jurisdiction to enforce. Those types of provisions are not incorporated into the license. 20/

The license will include all the provisions in the Anadromous Fish Flow Plan (Flow Plan) and the Anadromous and Resident Fish Non-Flow Plan (Non-Flow Plan) included in the Fisheries Agreement, which relate to the fishery resources affected by the project. As stated above, these include, but are not limited to, the Fisheries Agreement's requirements regarding the minimum flow requirements, downramping rates and times, adjustments to flows during spawning periods, and various monitoring measures. The provisions of the Flow Plan will mitigate the impacts of daily and seasonal downstream flow fluctuations. The provisions of the Non-Flow Plan speak to the residual impacts of chronic fry stranding due to daily flow changes and loss or inaccessibility of habitat resulting from the configuration of the project.

The license will include all the provisions of the Erosion Control Agreement. The EA determined that shoreline and road erosion are conditions which will continue to deteriorate unless addressed, and that the Erosion Agreement considers shoreline sites where erosion control would be of most value.

The license will include all the terms of the Cultural Resources Agreement, which provides for the protection, maintenance, and mitigation of archaeological and historic resources. The EA determined that the potential for undiscovered prehistoric sites in the project area is high. Archaeological sites have been identified through an inventory-level survey in the draw-down zone at Ross Lake and in nearby forested areas. Also, certain properties at the project have been identified as eligible for listing in the National Register of Historic Places.

The license will include all the terms of the Traditional Cultural Properties Agreements. Several areas of concern relating to project operation which have a bearing on traditional cultural values were identified during the environmental analysis process. These include continued lack of access to archaeological sites with traditional cultural value and significance due to flooding of areas to create reservoirs; continued impact on downstream traditional economic activity sites (such as fishing locations) and the continued need to

20/ The licensee may proceed under these settlement provisions as private agreements among the parties (that may be enforced through private remedies independent of the Commission) insofar as they do not conflict with the license articles or interfere with the exercise of the Commission's statutory authority. See, e.g., Consumers Power Company, 68 FERC 61,077 (1994) at pp. 61,372, 61,374.

maintain the fishery; and development of recreation which would have an impact on traditional cultural values and properties.

The mitigative measures are appropriate in light of the potential effects of project operation on traditional cultural properties. The determinations made in the EA regarding the effect of relicensing this project on traditional cultural properties lead to the conclusion that the provisions of the Cultural Properties Agreements provide appropriate mitigation measures, but that certain effects on traditional cultural properties (such as lack of access to archaeological sites and historic information below reservoir draw-down zones) will continue despite these mitigative measures. Therefore, funding by Seattle of traditional cultural activities is appropriate in this instance, since measures to provide equivalent mitigation of this type of effect on traditional cultural properties are not possible with continued operation of the project.

The license will include the provisions in the Wildlife Agreement relating to support for the wildlife research program. The program will provide support for research on wildlife resources (including the impact or effect of the project on wildlife) and facilitate the development of information and methods that will lead to better understanding and management of the wildlife and ecosystems in these areas. Under the new license, Seattle will also provide financial support, through annual contributions, for the educational program at the North Cascades Environmental Learning Center established in the Recreation and Aesthetics Agreement.

The license will not, however, include the Agreement's provisions for elk habitat, to be selected by a Wildlife Land Acquisition Group and acquired by the licensee. The EA concluded that relicensing the project will not affect elk. Moreover, according to the Wildlife Agreement, the elk habitat will not be located within the Recreation Area (the reservation within which the project is located). 21/ In fact, these habitat may well be located within one or more different federal reservations. Also, the license will not include the provisions under which the licensee has agreed to fund the Park Service's long-term environmental monitoring within the North Cascades National Park Complex (encompassing the National Recreation Area, the North Cascades National Park, and the Lake Chelan Recreation Area), since most of the monitoring will involve lands far beyond the project boundary and in other reservations. Similarly, the license will not include the provisions under which the licensee has agreed to fund the Forest Service's inventory and planning of bald eagle and other wildlife habitat, since these activities

21/ As proposed in the Wildlife Agreement, the elk habitat would be located some 15 to 20 miles from the project.

will occur from 10 to 48 miles downstream of the project, in the Skagit National Recreation River Corridor and the Sauk, Suiattle, and Cascade National Scenic River Corridors. As noted, the Commission has no objection to any of these measures, and the parties are free to carry out these provisions of their agreement.

The license will include those measures in the Recreation and Aesthetics Agreement which will improve the visual quality of project facilities and provide additional recreational opportunities within or reasonably close to the project boundary. These measures take into account the needs of boaters, hikers, fishermen, picnickers, and tourists who seek to enjoy the natural resources of the area. The license will not include six recreation sites that are between 22 and 45 miles from the project boundary and that are located in reservations other than the one the project occupies.

VI. WATER QUALITY CERTIFICATION

Under Section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1), the Commission may not issue a license for a hydroelectric project unless the state certifying agency has either issued water quality certification for the project or waived certification for the project by failing to act on a request for certification within a reasonable period of time, not to exceed one year.

By letter dated April 8, 1977, the Washington Department of Ecology (Department of Ecology) noted that the Skagit River Project caused no adverse downstream water quality effects and that water quality was high. By letter to the Department of Ecology dated June 29, 1977, Seattle requested water quality certification for the project. Because the Department of Ecology did not act on the request within one year, the certification is deemed waived. 22/

VII. COASTAL ZONE MANAGEMENT ACT

Under Section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA), 16 U.S.C. 1456(3)(A), the Commission cannot issue a license for a project within or affecting a state's coastal zone unless the state CZMA agency concurs with the license applicant's certification of consistency with the state's CZMA program. Because the Skagit River Project is located in a coastal zone and may affect coastal resources, the Department of Ecology must review the proposed project for consistency with the state's Coastal Management Program. Under the CZMA, before a license can

22/ By letter dated December 13, 1991, the Department of Ecology acknowledged that it had waived certification.

be issued, the Department of Ecology must either (1) find the project consistent with the CZMA program, or (2) waive the requirements by failing to act in a timely manner (i.e., within 180 days of receiving the applicant's certification).

By letter dated January 7, 1994, the Commission asked Seattle to consult with the Department of Ecology and supply the Department of Ecology and the Commission with a certification of consistency with the Coastal Management Program. The Department of Ecology responded to Seattle with a concurrence letter dated February 15, 1994. Seattle responded to the Commission by letter dated February 23, 1994. 23/

VIII. THREATENED AND ENDANGERED SPECIES

The EA noted that the Skagit River Project is located in an area inhabited by peregrine falcon (endangered species), northern spotted owl (threatened species), bald eagle (threatened species), marbled murrelet (threatened species), grizzly bear (threatened species), and gray wolf (endangered species). The EA evaluated whether these species would be affected by the proposed relicensing of the project. No specific case has been identified where the project is causing problems for any listed species, and continued operation of the project will not likely cause any new or direct impact on listed species or their habitats.

The Commission staff prepared a biological assessment pursuant to the Endangered Species Act in which it concluded that the project is unlikely to adversely affect listed species. The biological assessment was submitted to FWS on May 31, 1994. By letter dated August 10, 1994, FWS concurred with its conclusion. FWS recommended that Seattle place identifiers, such as aviation spheres, to prevent eagle collisions with the powerlines at each location where the lines cross the Skagit River. The biological assessment indicated that bald eagles were not known to have collided with the powerlines. However, marking the transmission line sections that cross the Skagit River is justified by bald eagle use of the river as a flight path and involves negligible costs. Therefore, Article 411 requires Seattle to install

23/ Coastal resources that may be affected by hydroelectric development in Washington include anadromous fish, water quality, and sediment. The expected impacts of relicensing are quantified in the EA. Because the current operation of the Skagit River Project will not change, no new impacts will occur. Continued flow fluctuations from project operations would have a minor effect on anadromous fish. Based on the EA, we conclude that the Skagit River Project will not have a significant impact on coastal resources.

aviation markers on the section of the project transmission line that crosses the river.

IX. WILD AND SCENIC RIVERS

In 1978, Section 703 of P.L. 95-625 24/ designated selected segments of the Skagit, Cascade, Sauk, and Suiattle Rivers for inclusion in the national Wild and Scenic Rivers System. Below the Gorge Powerhouse, the Skagit River runs free of impoundments and is protected under the Wild and Scenic Rivers Act from the Recreation Area boundary at Bacon Creek (river mile 82.9) to Sedro Woolley (river mile 24.4). Also protected are the three main tributaries to the Skagit, the Cascade, Sauk, and Suiattle Rivers, which enter the Skagit downstream from the project impoundments. 25/ As noted, the Skagit River Project is located between river miles 127 and 94 of the Skagit River. Existing project transmission lines and towers are visible along the Skagit River.

Visual conditions are of particular concern in the Wild and Scenic River segments. 26/ However, the EA concluded that, if the licensee is required to revegetate along the rights-of-way and repaint powerline towers, relicensing of the Skagit River Project will not affect the wild and scenic river segments. The license so requires.

X. FISH PASSAGE

Section 18 of the FPA, 16 U.S.C. 811, states that the Commission shall require construction, maintenance, and operation by a licensee of such fishways as may be prescribed by the Secretary of Commerce or of the Interior. As parties to the

24/ 92 Stat. 3522 (Nov. 10, 1978).

25/ See Report on Aesthetics: Visual Quality Mitigation Analysis at 1.1.

26/ Section 7(a) of the Wild and Scenic Rivers Act, 16 U.S.C. 1278, prohibits the Commission from licensing "the construction of" any project works that would be "on or directly affecting" a reach of river included in the Wild and Scenic Rivers System, or licensing "the construction of" any water resource project that would have "a direct and adverse effect on the values for which such river was established" The Skagit River Project predates the wild and scenic designation in question, and the new license authorizes no new construction affecting the designated reach. Therefore, the Act does not bar the relicensing of the project. Cf. Northern States Power Co., 67 FERC 61,282 (1994) at p. 61,959.

Settlement Agreement, both Interior (FWS) and Commerce (NMFS) agreed (along with other parties to the Settlement Agreement) "that all issues concerning environmental impacts from relicensing of the Project, as currently constructed, are satisfactorily resolved by these Agreements." 27/ Neither agency prescribed a fishway or requested a reservation of fishway prescription authority. Standard license Article 15 reserves the Commission's authority to require fish passage in the future, should circumstances warrant. 28/

XI. SECTION 4(e) OF THE FEDERAL POWER ACT

Section 4(e) of the FPA, 16 U.S.C. 797(e), requires that Commission licenses for projects located within United States reservations must include all conditions that the Secretary of the department under whose supervision the reservation falls shall deem necessary for the adequate protection and utilization of such reservation. As noted, the Skagit River Project is within the Recreation Area. 29/ The Park Service, which administers the Recreation Area, is a party to the Settlement Agreement, which provides that "all issues concerning environmental impacts from relicensing of the Project, as currently constructed, are satisfactorily resolved by these Agreements." 30/

27/ Offer of Settlement at 5.

28/ See Form L-5, Terms and Conditions for Constructed Major Project Affecting Navigable Waters and Lands of the of the United States, 17 FPC 1832 (1975), incorporated by reference in the new license for Project No. 553. See Ordering paragraph (D), *infra*. Standard license Article 15 provides that the Commission, either upon its own motion or upon recommendation by Interior or state fish and wildlife agencies, and after notice and opportunity for hearing, may order the licensee to install facilities to benefit the fish resources.

29/ As lands acquired and retained by the United States to carry out the public purposes of the Recreation Area, these lands constitute a "reservation" within the meaning of Section 3(2) of the FPA. See generally *City of Redding, California*, 63 FERC 61,175 (1993).

30/ Offer of Settlement at 5. We note that, while the parties may stipulate that the Settlement Agreement satisfies their concerns regarding the project, and while the Commission is accepting the Agreement, the new license remains subject to articles reserving the Commission's authority, after notice and opportunity for hearing, to
(continued...)

The general provisions included in each of the Settlement Agreements state that the signatories submit the Agreements to the Commission "as their recommendations relating to said resource under any applicable provisions of the FPA (including without limitation Sections 10(a), 10(j), and 4(e) thereof.)" The Park Service did not submit any additional comments on the proposed project or conditions for inclusion in the license.

XII. SECTION 10 OF THE FEDERAL POWER ACT

Section 15(a)(2) of the FPA provides that the requirements of Section 10 of the FPA, 16 U.S.C. 803, pertaining to conditions of licenses, are applicable also to Commission consideration of new license applications.

A. Comprehensive Plans

Section 10(a)(2)(A) of the FPA, 16 U.S.C. 803(a)(2)(A), requires the Commission to consider the extent to which a project is consistent with the federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project. 31/ Under Section 10(a)(2)(A), federal and state agencies filed a total of 65 comprehensive plans for Washington. Of these, the staff determined that 14 of

30/(...continued)

address resource issues if future circumstances warrant.

See Puget Sound Power & Light Co., 41 FERC 61,255 (1987) at p. 61,665; Public Utility District No. 1 of Douglas County, Washington, 54 FERC 61,208 (1991) at p. 61,210.

31/ Comprehensive plans for this purpose are defined at 18 C.F.R. 2.19 (1994).

these plans are relevant to this project. 32/ No conflicts were found.

B. Recommendations of Other Agencies

Section 10(a)(2)(B) of the FPA, 16 U.S.C. 803(a)(2)(B), requires the Commission to consider the recommendations of relevant federal and state agencies exercising administration over flood control, navigation, irrigation, recreation, cultural and other relevant resources, as well as the recommendations of Indian tribes affected by the project. As noted, the Settlement Agreement constitutes the recommendations of the agencies and tribes, and the pertinent fish and wildlife terms of the Agreement are reflected in the articles of the license we issue today.

- 32/(1) Statute establishing the State Scenic River System, 1977, State of Washington;
- (2) Pacific Fishery Management Council, 1978, National Marine Fisheries Service;
- (3) Statewide Comprehensive Outdoor Recreation Plan, 1985, Washington Interagency Committee for Outdoor Recreation;
- (4) 1987 Strategies For Wildlife, 1986, Washington Department of Game;
- (5) Hydroelectric Project Assessment Guidelines, 1987, Washington State Department of Fisheries;
- (6) Natural Heritage Plan, 1987, Washington State Department of Natural Resources;
- (7) Woodlands Priority Plan, 1987, Washington Interagency Committee for Outdoor Recreation;
- (8) General Management Plan: North Cascades National Park, Ross Lake National Recreation Area and Lake Chelan National Recreation Area, 1988, National Park Service;
- (9) Scenic Rivers Program report, 1988, Washington State Parks and Recreation Commission;
- (10) Mount Baker-Snoqualmie National Forest Land and Resource Management Plan, 1990, Forest Service;
- (11) Washington Outdoors: Assessment and Policy Plan 1990-1995, 1990, Washington Interagency Committee for Outdoor Recreation;
- (12) State Trails Plan: Policy and Action Document, 1991, Washington Interagency Committee for Outdoor Recreation;
- (13) Northwest Conservation and Electric Power Plan, 1991, Northwest Power Planning Council; and
- (14) Hydropower Development/resource Protection Plan, 1992, Washington State Energy Office.

C. Consumption Efficiency Improvement Programs

Section 10(a)(2)(C) of the FPA, 16 U.S.C. 803(a)(2)(C), requires that the Commission, in acting on a license application such as this, to consider the electricity consumption efficiency improvement program of the applicant, including its plans, performance, and capabilities for encouraging or assisting its customers to conserve electricity cost-effectively, taking into account the published policies, restrictions, and requirements of state regulatory authorities. In the State of Washington, the Washington Utilities and Transportation Commission has statutory and regulatory authority regarding least-cost planning and energy conservation.

Seattle's plans and activities to promote and achieve conservation of electric energy and to reduce the peak demand for generating capacity include (1) energy-efficient street lighting replacements, (2) water heater wraps, (3) an efficiency evaluation and upgrade of the distribution system, (4) residential customers free energy audits, and (5) bill-stuffing information to customers. The Washington Utilities and Transportation Commission, the State's regulatory commission, has no specific statute regarding conservation planning in Washington.

The Skagit River Project complies with the development plans and programs of the Pacific Northwest Electric Power and Conservation Planning Council and its Regional Energy Plan.

D. Recommendations of Federal and State Fish and Wildlife Agencies

Section 10(j) of the FPA, 16 U.S.C. 803(j), requires the Commission to include license conditions based on recommendations of federal and state fish and wildlife agencies submitted pursuant to the Fish and Wildlife Coordination Act, 16 U.S.C.

661 et seq., for the protection, mitigation, and enhancement of fish and wildlife resources. The EA and this order address these concerns. This license includes appropriate conditions consistent with the recommendations of the agencies, as incorporated in the Settlement Agreement.

XIII. SECTION 15 OF THE FEDERAL POWER ACT

Section 15 of the FPA, 16 U.S.C. 808, specifies a number of factors that the Commission is required to evaluate and consider in acting on an application for a new license following the expiration of an existing license. These factors include (1) compliance history and ability to comply with the requirements imposed in the new license; (2) safe management, operation, and maintenance of the project; (3) ability to provide efficient and reliable electric service; (4) need for power;

(5) transmission services; (6) project modifications; (7) cost effectiveness of plans; and (8) actions affecting the public.

A. Compliance History and Ability to Comply with a New License

The Federal Power Commission issued the license for the Skagit River Project in 1928. We have reviewed Seattle's compliance with the terms and conditions of the existing license. Seattle has a satisfactory record of filing submittals in a timely fashion and of complying with its existing license. Therefore, and in consideration of the requirements of the new license, we conclude that Seattle has or can acquire the resources and expertise to carry out its plans and comply with all articles, terms and conditions of the new license and other provisions of Part I of the FPA.

B. Safe Management, Operation, and Maintenance

Seattle has continuously operated the plant in a safe way. Because of this safe operation, there are no plans to change the present operating plan.

Seattle has developed an emergency action plan to warn the public in the event that a problem is detected at one of the dams. It has installed safety barriers and warning signs at all three of the developments to warn boaters not to proceed any closer to the dams. Prior to initiating large spills at Gorge dam the operators patrol the downstream river area to warn the public about impending changes in operation.

Based upon our review of the specific information provided by Seattle on various aspects of the Skagit River Project that affect public safety, inspection reports by the Commission's Regional Director, and independent consultant reports filed under Part 12 of our regulations 33/, we conclude that Seattle's plans to manage, operate and maintain the Skagit River Project are adequate. 34/

33/ 18 C.F.R. Part 12 (1994).

34/ Analysis of related issues is provided in the Safety and Design Assessment.

C. Efficient and Reliable Electric Service

The Commission's staff examined Seattle's operation of the Skagit River Project and found that Seattle has operated the project in an efficient and reliable manner. The staff found that lost generation because of unscheduled outages is not significant compared to the annual generation for the Skagit River Project. Seattle coordinates the operation of the Ross, Diablo, and Gorge developments to efficiently develop the hydroelectric potential of the Skagit River. In light of the above, and our review of staff operation inspection reports and Seattle's past performance and future plans to operate the project, we believe that the project is, and under the new license will continue to be, operated and maintained in an efficient and reliable manner.

D. Need for Power

Seattle's need for the electricity produced by the Skagit River Project is addressed in the EA. The project is located in the Northwest Power Pool area of the Western Systems Coordinating Council and in the Northwest Power Planning Council's (NPPC) planning region.

Seattle is a municipal corporation organized and operating under the laws of the State of Washington. Seattle's system supplies public utility services to city residents. Seattle has over 300,000 customers with an average annual energy requirement of about 9,600 gigawatthours (GWh). The project produces annually an average of 3,946 GWh under current operating conditions, somewhat less than half of the total demand. Seattle serves about 75 percent of its load with owned and contracted resources, and relies on purchases from Bonneville Power Administration (BPA) to meet its remaining load.

Seattle intends to continue using power generated from the project to serve its growing load requirements and displace other, higher cost resources. Seattle's current medium base electric load growth forecast indicates it will continue to need firm energy resources, such as that provided by the Skagit River Project. Thus, it is clear that the project has been providing and can continue to provide a substantial amount of Seattle's electric energy requirements.

E. Transmission Services

Seattle proposes no changes in the transmission network affected by the Skagit River Project operation. Therefore, we find that the existing transmission system is sufficient.

F. Cost-Effectiveness of Plans

No additional generating capacity is proposed at the Skagit River Project. The Settlement Agreement, as approved herein, provides for certain modifications to project operation in order to enhance fisheries resources. Taking into account these modifications, the project will fully develop and use the economical hydropower potential of the site.

G. Actions Affecting the Public

The Skagit River Project plays an important role in the local economy and quality of life sought by the area residents and visitors. Seattle pays annual taxes to the Province of British Columbia and contributes payments in lieu of taxes to the jurisdictions in the State of Washington neighboring the Skagit River Project. The project also provides employment opportunities and attracts tourists who patronize local businesses.

XIV. COMPREHENSIVE DEVELOPMENT

Pursuant to Section 10(a)(1) of the FPA, any license issued shall be such as in the Commission's judgment will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for all beneficial public uses. The decision to license this project, and the terms and conditions included herein, reflect such consideration.

A. Recommended Alternative

The EA analyzes the effects of the Skagit River Project as proposed in the Settlement Agreement, as well as the effects of the Settlement Agreement with minor additions and refinements considered by the staff, and the effects of denying the relicense application. The Commission has selected as the preferred alternative the issuance of a new license consistent with the terms of the Settlement Agreement. We have selected this option because (1) the environmental effects of continuing to operate the hydroelectric facility will be minor; (2) the recommended mitigation and enhancement measures will benefit fisheries, wildlife, cultural resources, and recreation and aesthetics; (3) the licensee is required to ensure the continued monitoring of environmental needs in the project area; and (4) 2,655 GWh of energy will continue to be generated annually from a renewable energy resource that creates no atmospheric pollutants.

In our view, continued operation of the project consistent with the terms of the Settlement Agreement will allow Seattle to continue to provide its citizens with a reasonably priced source of power from a renewable energy resource while also providing substantial benefits for nondevelopmental resources. For this

reason, we find the Settlement Agreement fair, equitable, and in the public interest. We further find that the project, if operated under a license with the terms included herein, will be best adapted to a comprehensive plan for the Skagit River Basin.

XV. LICENSE TERM

Section 15 of the FPA specifies that a new license shall be for a term that the Commission determines to be in the public interest, but not less than 30 years or more than 50 years. The Offer of Settlement states that various provisions contained in the individual Settlement Agreements were negotiated based upon a license term of 30 years. 35/ In comments to the draft EA, the Department of the Interior, the North Cascades Institute, Seattle, and the Conservation Council each urged the Commission to designate a license term of 30 years, consistent with the Settlement Agreement. It appears that all interested parties to the proceeding favor a 30-year term for Seattle's new license. Therefore, in this particular instance, we will issue the license for a 30-year term.

XVI. SUMMARY

In light of all of the above, including our review of the environmental analysis of the proposed project and its alternatives conducted by our staff, we conclude that issuing a new license for the Skagit River Project with the requirements included herein will not conflict with any planned or authorized development and will best adapt the project to a comprehensive plan for developing the Skagit River for beneficial public purposes.

The Commission orders:

(A) This license is issued to Seattle City Light Company (Licensee) for a period of 30 years, effective the first day of the month in which this license is issued, to operate and maintain the Skagit River Project. This license is subject to the terms and conditions of the FPA, which is incorporated by reference as a part of this license, and subject to the regulations the Commission issues under the provisions of the FPA.

(B) The project consists of:

35/ Under the Agreement, a license term of longer duration would give rise to a right of the parties to initiate a proceeding before the Commission between the 25th and 30th year of the license to reopen the provisions which were specifically based upon a 30-year license term.

(B)(1) The following parts of exhibit M and the following exhibit J, K, and L drawings conform to the Commission's rules and regulations and are approved and made a part of the license:

Exhibit M: page 1 through 4, and table M-1 with the exceptions noted in footnote number. 36/

Table 1. Exhibit J and Drawings

Exhibits	FERC No. 553	Showing
J-101	217	General Project Map
J-102	218	General Project Map
K T-12a through T-46a	219 through 257	Transmission R/W Bothell Sub to Newhalem
K-101 through 109	258 through 266	Project Area Newhalem to Canadian Border

36/ The Commission in a March 6, 1956 order approved an Exhibit M which showed the installed capacity of units 21 and 22 was 27 megawatts (MW). On December 8, 1992, the Commission authorized the rewinding of Unit No. 24 at the Gorge High Dam Development, increasing the installed capacity from 60 MW to 97 MW. Article 304 requires the licensee to file a revised Exhibit M.

Table 2. Approved exhibit L drawings

Sheet number	FERC No.	Title
L - 101	267	Gorge Power Facilities, Plan & Sections
L - 102	268	Gorge Dam Plan, Elevation & Sections
L - 107	273	Gorge Powerhouse Plan & Sections
L - 111	277	Diablo Power Facilities Plan & Sections
L - 112	278	Diablo Dam Plan, Elevation & Sections
L - 116	282	Diablo Powerhouse Plan & Sections
L - 120	286	Ross Power Facilities Plan & Section
L - 121	287	Ross Dam Plan, Elevation & Sections
L - 130	296	Ross Powerhouse Plan & Sections

(B)(2) The primary transmission line segments and related electrical facilities extend from the project generators, through appropriate voltage transformation, to a point of interconnection with the Bonneville Power Administration's (BPA) transmission system at the North Mountain Substation (NM), and to the applicant's system at the Bothell Substation (Sub).

The primary line segments include: the generator leads; two, 3-phase, delta-wye, step-up transformer banks each rated 210-Megavoltamperes (MVA) and 66.75-MVA at Ross and Diablo powerhouses respectively, and 93-MVA and 75-MVA at the Gorge powerhouse; the six, overhead, 230-kilovolt (kV) transmission lines listed below; and, appurtenant facilities.

Circuit Name	Line Segment	Circuit Miles
Ross #1	Ross-Diablo	3.80
Ross #2	Ross-Diablo	3.85
Diablo #1	Diablo-Sub	87.20
Diablo #2	Diablo-Sub	87.20
Diablo #3	Diablo-Sub	87.20
Go-NM	Gorge-North Mt.	39.00

(B)(3) All of the structures, fixtures, equipment or facilities used to operate or maintain the project and located within the project boundary, all portable property that may be employed in connection with the project and located within or outside the project boundary, and all riparian or other rights that are necessary or appropriate in the operation or maintenance of the project.

(C) The exhibits J, K, M, and L described above are approved and made part of the license.

(D) This license is subject to the articles set forth in Form L-5, (October 1975), entitled "Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters of the United States and Lands of the United States", and the following additional articles:

Article 201. The Licensee shall pay the United States an annual charge, effective the first day of the month in which this license is issued for the purpose of:

(a) Reimbursing the United States for the cost of administration of Part I of the FPA as determined by the Commission. The authorized installed capacity for that purpose is 689,400 kilowatts.

(b) Recompensing the United States for the use, occupancy, and enjoyment of 19,209.25 acres of its lands, other than for transmission line right-of-way. The Licensee shall pay a reasonable charge as determined by the Commission in accordance with its regulations, in effect from time to time.

(c) Recompensing the United States for the use, occupancy and enjoyment of 95.5 acres of its lands for transmission line right-of-way. The Licensee shall pay a reasonable charge as determined by the Commission in accordance with its regulations, in effect from time to time.

Article 202. (a) In accordance with the provisions of this article, the Licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands

and waters for certain types of use and occupancy, without prior Commission approval. The Licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the Licensee shall also have continuing responsibility to supervise and control the use and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article.

If a permitted use and occupancy violates any condition of this article or any other condition imposed by the Licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the Licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The type of use and occupancy of project lands and water for which the Licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time and where said facility is intended to serve single-family type dwellings; (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline; and (4) food plots and other wildlife enhancement.

To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the Licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The Licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the use and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the Licensee shall: (1) inspect the site of the proposed construction; (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site; and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline.

To implement this paragraph (b), the Licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy or project lands and waters, which may be subject to the payment of a reasonable fee to cover the

Licensee's costs of administering the permit program. The commission reserves the right to require the Licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines or procedures.

(c) The Licensee may convey easements or rights-of-way across, or leases of, project lands for: (1) replacement, expansion, realignment, or maintenance of bridges or roads where all necessary state and federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project reservoir.

No later than January 31 of each year, the Licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed.

(d) The Licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary state and federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary federal and state water quality certification or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary federal and state approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile (measured over project waters) from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from project waters at normal surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year.

At least 60 days before conveying any interest in project lands under this paragraph (d), the Licensee must submit a letter to the Director, Office of Hydropower Licensing, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked exhibit G or K map may be used), the nature of the proposed use, the identify of any federal or state agency official consulted, and any federal or state approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the Licensee to file an application for prior approval, the Licensee may convey the intended interest at the end of that period.

(e) The following additional conditions apply to any intended conveyance under paragraph (c) or (d) of this article:

(1) Before conveying the interest, the Licensee shall consult with federal and state fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.

(2) Before conveying the interest, the Licensee shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved exhibit R or approved report on recreational resources of an exhibit E; or, if the project does not have an approved exhibit R or approved report on recreational resources, that the lands to be conveyed do not have recreational value.

(3) The instrument of conveyance must include the following covenants running with the land: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (ii) the grantee shall take all reasonable precautions to insure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project; and (iii) the grantee shall not unduly restrict public access to project waters.

(4) The Commission reserves the right to require the Licensee to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational, and other environmental values.

(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised exhibit G or K drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from

the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised exhibit G or K drawings would be filed for approval for other purposes.

Articles 301. The Licensee shall reserve a maximum of 120,000 acre-feet of storage space in Ross reservoir for flood control during the period from October 1 through, and to include, March 15.

The required storage space, if not previously obtained through power withdrawals, shall be provided by drawing down the reservoir at a rate equaling or exceeding a uniform drawdown rate from zero on October 1 to a rate that provides 60,000 acre-feet on November 15 and similarly drawing down, but at a more rapid rate, to provide the full 120,000 acre-feet on December 1, with the reservoir level at elevation 1,592.0 feet.

Whenever the National Weather Service, Northwest River Forecast Center, forecasts that the natural flow at the gaging station near Concrete, Washington will equal or exceed 90,000 cubic feet per second (cfs) in 8 hours on a rising stage of a flood, the Licensee shall, as a maximum, release only such flows from Ross dam as are necessary to the normal production of electric energy at Ross, Diablo, and Gorge plants, but not more than a mean daily discharge of 5,000 cfs, plus or minus 20 percent allowance for operational latitude.

If the reservoir pool should reach the elevation of 1,602.5 feet before the flood recession occurs, the gates shall be operated to produce maximum surcharge storage to gain the maximum reduction of discharge downstream. If surcharge storage is produced it shall be maintained as long as possible, or until flood recession occurs. After flood recession starts, releases from Ross reservoir shall be increased until discharge equals inflow. Storage shall be evacuated as rapidly as possible without endangering downstream installations as soon as the discharge at Concrete recedes to 90,000 cfs and a falling trend is predicted.

The document entitled "Details of Regulation for Use of Storage Allocated for Flood Control in Ross Reservoir, Skagit River, Washington (revised May 25, 1967)," prepared by the U.S. Army Corps of Engineers and Seattle, is incorporated by reference as a part of this article.

Article 302. The Licensee, for the limited purpose of making flood control operational changes, shall comply with requests for operational changes made by the Corps of Engineers, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Army, after notice and opportunity for hearing.

Article 303. Within 90 days of license issuance, the Licensee shall file for Commission approval revised exhibits M describing the project as built.

Article 401. Within 180 days of license issuance, the Licensee shall file with the Commission for approval a Project Fishery Resources Plan (Project Fishery Plan) to minimize impacts of the operation of the Skagit River Project on fishery resources, including related spawning grounds and habitat. The Project Fishery Plan shall implement the following provisions of the Fisheries Settlement Agreement incorporating the Anadromous Fish Flow Plan and the Anadromous and Resident Fish Non-flow Plan. The Project Fishery Plan shall address at a minimum, the following: (1) oversight and coordination with the Flow Plan Coordinating Committee and the Non-flow Plan Coordinating Committee; (2) Ross Lake reservoir operations; (3) the anadromous fish flow plan; (4) flow insufficiency; (5) flow limitations; (6) operating considerations; (7) monitoring and compliance; (8) the anadromous and resident fish non-flow plan, (9) program managers; (10) anadromous fish programs; (11) County Line and Newhalem Ponds; and (12) resident trout protection and production programs. The Project Fishery Plan shall address the requirements of Articles 402 through 408 of the license, including descriptions, schedules, funding mechanisms and project "islands", if any, established for off-site mitigation.

The Licensee shall prepare the Project Fishery Plan after consultation with the National Park Service; U.S. Fish and Wildlife Service; U.S. Bureau of Indian Affairs; U.S. Forest Service; National Marine Fisheries Service; Upper Skagit Tribe, Sauk-Suiattle Tribe and Swinomish Tribal Community; Washington Department of Fisheries; Washington Department of Wildlife; and the North Cascades Conservation Council. The Licensee shall allow a minimum of 30 days for the signatories to the Fisheries Settlement Agreement to comment and to make recommendations on the Project Fishery Plan before filing it with the Commission. The Licensee shall include in its filing documentation of such consultation including copies of the comments and recommendations on the proposed plan received during the consultation. Further, the Licensee should identify in its filing how the comments or recommendations are accommodated by the proposed plan. If the Licensee does not adopt a recommendation of a consulted entity, the filing shall include the Licensee's reasons, based on project specific information. The Commission reserves the right to require changes to the Project Fishery Plan. Upon Commission

approval, the Licensee shall implement the Project Fishery Plan, including any changes required by the Commission.

Article 402. The Licensee shall, in accordance with Section 2.4.2 of the Fisheries Settlement Agreement, host an annual meeting of the relevant agencies and tribes, interested parties, and Commission staff to facilitate coordination of implementation of the articles of this license. The Licensee shall file a summary of the meeting with the Commission.

Article 403. The Licensee shall fill Ross Lake as early and as full as possible after April 15 each year, in accordance with Section 4.1 of the Fisheries Settlement Agreement. Full pool in Ross Lake shall be achieved by July 31 each year and maintained until Labor Day weekend, subject to adequate runoff, anadromous fisheries protection flows, flood protection, minimized spill, and firm power generation needs (i.e., firm load, the minimum amount of power which the Licensee is obligated to provide from a combination of generation and contract resources for the use of its customers). In any overdraft year (i.e., in those years in which Ross Lake is drafted below the energy content curve), the Licensee shall bring Ross Lake level up to the Variable Energy Content Curve no later than March 31, subject to the constraints and hydrologic conditions described above.

Article 404. The Licensee, in the Project Fishery Plan, shall address flows for protecting anadromous fishery resources in the mainstem Skagit River downstream of the Gorge powerhouse, in accordance with Section 6.0 of the Fisheries Settlement Agreement. Where minimum flows required for incubation and fry protection for the various species of anadromous salmon or steelhead spawning groups overlap in time, the Licensee shall provide the highest minimum flow indicated on any particular day.

(1) Salmon

(a) Salmon Redd Protection. For spawning salmon and subsequent protection of redds in the Skagit River below the Gorge Development, the Licensee shall release water from the Gorge Development so as to limit maximum flow levels during spawning, and maintain minimum flows throughout the incubation period that are adequate to keep most redds covered until the fry emerge, consistent with Section 6.3 of the Fisheries Settlement Agreement.

(b) Salmon Fry Protection. For newly emerged salmon fry in the Skagit River below the Gorge Development, the Licensee shall release water from the Gorge Development so as to limit the daily downramp amplitude, maintain minimum flows throughout the salmon fry protection period that are adequate to cover areas of gravel bar commonly inhabited by salmon fry, and limit downramping to

nighttime hours except in periods of high flow, consistent with Section 6.3 of the Fisheries Settlement Agreement.

(2) Steelhead

(a) Steelhead Redd Protection. For spawning steelhead and subsequent protection of redds in the Skagit River below the Gorge Development, the Licensee shall release water from the Gorge Development so as to limit maximum flow levels during spawning, shape daily flows for uniformity over the extended spawning period, and maintain minimum flows through the incubation period that are adequate to keep most redds covered until fry emerge from the gravel, consistent with Section 6.3 of the Fisheries Settlement Agreement.

(b) Steelhead Fry Protection. For newly emerged steelhead fry in the Skagit River below the Gorge Development, the Licensee shall release water from the Gorge Development so as to limit daily downramp amplitude and maintain minimum flows throughout the steelhead fry protection period that are adequate to cover areas of gravel bar commonly inhabited by steelhead fry, and downramping will be limited to a very slow rate when Project discharge is moderately low and limited to a moderate rate when Project discharge is relatively high to minimize or prevent fry stranding on gravel bars, consistent with Section 6.3 of the Fisheries Settlement Agreement.

Article 405. The Licensee shall release water from the Gorge Development, including where appropriate reduced minimum instream flows, to provide suitable habitat conditions for salmon and steelhead in the Skagit River during years or seasons of exceptionally low flows, in accordance with Section 6.4 of the Fisheries Settlement Agreement. Flow insufficiency shall be defined as water conditions during a month or months characterized by abnormally low precipitation and sidestream runoff that has the potential to result in a failure to refill Ross Lake by July 31 or empty Ross Lake if operations continue to draft at the rate determined by minimum required flows.

The Licensee shall identify those circumstances for which the effect of Settlement Agreement shall be limited due to the Licensee's inability to react to or control the flows or operating factors that affect fish, in accordance with Section 6.5 of the Fisheries Settlement Agreement and developed in consultation with the Parties to the Fisheries Settlement Agreement. If the flows are modified due to an emergency condition, the Licensee shall notify the Fisheries Settlement Agreement signatories immediately and file a report with the Commission as soon as possible, but no later than 10 days after each such incident.

Article 406. The Licensee shall file project power planning reports and scheduling procedures, in accordance with Section 6.6 of the Fisheries Settlement Agreement and developed in consultation with the Parties to the Fisheries Settlement Agreement. The schedules of hourly generation during each calendar day shall be prepared in advance on the preceding Power Scheduling Day, in accordance with Section 6.6.2 of the Fisheries Settlement Agreement. Malfunctions of instruments affecting fish flow requirements for a period longer than 24 hours shall be reported immediately to the Fisheries Settlement Agreement signatories and a report must be filed with the Commission as soon as possible, but no later than 10 days after each such incident.

Article 407. The Licensee shall verify the Effective Spawning Habitat Model and the Temperature Unit Model, in accordance with Section 6.7.1 of the Fisheries Settlement Agreement.

The Licensee shall conduct field monitoring studies and surveys, in accordance with Section 6.7.2 of the Fisheries Settlement Agreement. The studies shall include: (1) Salmon Spawning Start and End Dates; (2) Steelhead Fry Protection Period Start and End Dates; and (3) Fry Stranding Surveys.

The Licensee shall conduct compliance monitoring, in accordance with Section 6.7.3 of the Fisheries Settlement Agreement. The Licensee shall record and make available to the Commission and all signatories to the Fisheries Settlement Agreement complete records of the real-time flow data measured at the gauging stations of the U.S. Geological Survey at Newhalem and Marblemount, and prepare semi-annual reports (January 1-June 30 and July 1-December 31) to demonstrate compliance with flows and operating restrictions embodied in this license and the Fisheries Settlement Agreement. The semi-annual reports shall be sent to the signatories to the Fisheries Settlement Agreement and to the Commission within 120 days of the end of the reporting period. Seattle may file these reports within 150 days during the first 5 years of the license.

The semi-annual reports shall include, but not be limited to the following: 1) minimum flows recorded at Newhalem gage; 2) hourly ramping rates during salmon and steelhead fry protection periods; 3) daily predicted Marblemount flows during the salmon fry protection period; 4) mean daily tributary inflow; 5) daily total downramp amplitude and portion of amplitude that occurred at Newhalem gage flows less than 4,000 cfs during salmon and steelhead fry protection Periods; 6) daily required instantaneous incubation flows based on Appendices C and G of the Fisheries Settlement Agreement; 7) the season spawning flow or spawning flows calculated to date for each salmon species or steelhead spawning group; 8) documentation and explanation of any flow violations; 9) calculated daily spawning flows; 10) planned

spawning flow for each species spawning or incubating during the reporting period; 11) list of daily flows calculated from the Spawning Control Curve for steelhead; 12) documentation of any decision to exercise a limitations clause (per Section 6.5 of the Fishery Settlement Agreement), including consultations with Parties to the Fisheries Settlement Agreement; 13) documentation of any emergencies that caused deviation from these License Articles and the Fisheries Settlement Agreement; 14) summary list of actions recommended during consultation with the parties and submitted to the Commission for approval during the reporting period; 15) daily fry protection flows as listed in Appendix I of the Fisheries Settlement Agreement; and 16) applicable minimum flows for the reporting period.

Article 408. The Licensee shall develop measures to address residual impacts and habitat losses for fishery resources due to operation of the Skagit River Project. The Licensee shall make available to the Washington Department of Fisheries and Wildlife and the Tribes a maximum of \$6,320,000, to implement non-flow measures with objectives, program management, schedules, and funding in accordance with Section 7 of the Fisheries Settlement Agreement. The Licensee shall include measures for steelhead smolt production, chinook research, off-channel chum habitat development and improvement, County Line and Newhalem ponds, instream or off-channel habitat improvement and sediment reduction program, and provisions for resident trout protection and production.

The Licensee shall file with the Commission an annual report and a final report for each such non-flow program, in accordance with Section 7.2 of the Fisheries Settlement Agreement. Each program annual report shall be filed within 60 days following the anniversary date of the license and include a budget report and a prospective work plan for the next reporting period and budget plan for the next two reporting periods. The individual program annual reports shall include requirements specific to that program as described in the Fisheries Settlement Agreement (Sections 7.3 through 7.6). Each program final report shall be filed with the Commission within one year of completion of the program and shall summarize the objectives, methods, and results of the program. The Commission reserves the right, after notice and opportunity for hearing to modify this funding and contribution arrangement, including ordering a suspension or cessation of contributions and expenditures, should it be necessary or appropriate.

Article 409. Within 180 days of license issuance, the Licensee shall file with the Commission for approval a Project Soil Erosion Control Plan (Project Erosion Plan) to control erosion and slope instability and to minimize the quantity of sediment resulting from operation of the Skagit River Project. The Project Erosion Plan shall implement the following provisions

of the Settlement Agreement Concerning Erosion Control and the Erosion Control Plan filed by the Licensee on April 30, 1991 for the 37 project-related recreation and project facility sites and the 18 project-related road sites. The Project Erosion Plan shall include, at a minimum: (1) descriptions of the erosion control sites, (2) descriptions and schedules for implementing passive and active erosion control measures, (3) a schedule for construction of the greenhouse facilities, (4) a description and implementation schedule of a plant propagation program for the primary purpose of supplying plant stock for erosion control, and (5) provisions for funding the implementation of the Project Erosion Plan.

The Licensee shall prepare the Project Erosion Plan after consultation with the U.S. Department of Interior, National Park Service. The Licensee shall allow a minimum of 30 days for the National Park Service to comment and to make recommendations on the Project Recreation Plan before filing it with the Commission. The Licensee shall include in its filing documentation of such consultation including copies of the comments and recommendations on the proposed plan received during the consultation. Further, the Licensee should identify in its filing how the comments or recommendations are accommodated by the proposed plan. If the Licensee does not adopt a recommendation of a consulted entity, the filing shall include the Licensee's reasons, based on project specific information. The Commission reserves the right to require changes to the Project Erosion Plan. Upon Commission approval, the Licensee shall implement the Project Erosion Plan, including any changes required by the Commission. The Licensee shall provide the National Park Service a maximum of \$845,000 for erosion control works at the sites specified in Table 5-1 of the Settlement Agreement Concerning Erosion Control and a maximum amount of \$500,000 for measures at new sites. The Licensee shall file the National Park Service annual accounting and funding report, pursuant to Section 6.4 of the Settlement Agreement Concerning Erosion Control, with the Commission. The Commission reserves the right, after notice and opportunity for hearing to modify this funding and contribution arrangement, including ordering a suspension or cessation of contributions and expenditures, should it be necessary or appropriate.

Article 410. Within 180 days of license issuance, the Licensee shall file with the Commission for approval, a plan to implement those portions of the Settlement Agreement Concerning Wildlife (Wildlife Agreement), and the Wildlife Habitat Protection and Management Plan (Wildlife Plan), filed by the Licensee on April 30, 1991, which concern providing and renovating an historic building (Bunkhouse #10) in the town of Newhalem to house a research facility, and certain correlative research and monitoring activities. The plan shall include, at a minimum: (1) a schedule for converting Bunkhouse #10 into a research facility and providing equipment for the building; (2) a

description of all funding to be provided, the use of such funds, and a schedule for fund disbursement (all dollar amounts must be expressed in 1990 dollars with provisions for annual adjustments, in the year of payment, for changes in the Consumer Price Index for All Urban Consumers as published by the U.S. Department of Labor for the Seattle metropolitan area), (3) provisions for operating and maintaining the facility, (4) a copy of any lease agreement related to the facility, (5) a schedule for submitting reports on the activities of the Wildlife Research Advisory Committee; and (6) a schedule for filing reports of all research and monitoring activities planned and carried out in relation to the research facility, including reports on research results. The Commission reserves the right, after notice and opportunity for hearing to modify this funding and contribution arrangement, including ordering a suspension or cessation of contributions and expenditures, should it be necessary or appropriate.

The Licensee shall prepare the plan after consultation with the U.S. National Park Service, the U.S. Fish & Wildlife Service, the U.S. Bureau of Indian Affairs, the U.S. Forest Service, the Washington Department of Wildlife, the Upper Skagit Tribe, the Sauk-Suiattle Tribe, the Swinomish Indian Tribal Community, the Nlaka'pamux Nation, and the North Cascades Conservation Council. The Licensee shall allow a minimum of 30 days for these entities to comment and to make recommendations on the plan before filing the plan with the Commission. The Licensee shall include in its filing documentation of such consultation, including copies of the comments and recommendations on the proposed plan received during the consultation. Further, the Licensee should identify in its filing how the comments or recommendations are accommodated by the proposed plan. If the Licensee does not adopt a recommendation of a consulted entity, the filing shall include the Licensee's reasons, based on project-specific information. The Commission reserves the right to require changes to the plan. Upon Commission approval, the Licensee shall implement the plan, including any changes required by the Commission.

Article 411. Within 180 days of license issuance, the Licensee shall file for Commission approval a Project Aviation Marker Plan (Project Marker Plan) to install powerline identifiers, such as aviation spheres, on the project transmission line at river crossings, in order to protect bald eagles at the project. The Project Marker Plan shall include, but not be limited to, the following: (1) the size and color of markers to be used, (2) the spacing of markers and (3) the locations of line crossings where markers will be installed.

The Licensee shall prepare the Project Marker Plan after consultation with the U.S. Fish and Wildlife Service. The Licensee shall allow a minimum of 30 days for the Fish and Wildlife Service to comment and to make recommendations on the

Project Marker Plan before filing it with the Commission. The Licensee shall include in its filing documentation of such consultation including copies of the comments and recommendations on the proposed plan received during the consultation. Further, the Licensee should identify in its filing how the comments or recommendations are accommodated by the proposed plan. If the Licensee does not adopt a recommendation of a consulted entity, the filing shall include the Licensee's reasons, based on project specific information. The Commission reserves the right to require changes to the Project Marker Plan. Upon Commission approval, the Licensee shall implement the Project Marker Plan, including any changes required by the Commission.

Article 412. Within 180 days of license issuance, the Licensee shall file for Commission approval a Project Recreation Plan implementing the following provisions of the Settlement Agreement on Recreation and Aesthetics and the Report on Recreation Resources filed by the Licensee on April 30, 1991. The Project Recreation Plan shall include, at a minimum, schedules, descriptions, project "islands", if any, established for off-site mitigation and funding proposals for the following continuing, mitigative and enhancement measures.

Continuing measures shall, in accordance with Section 3.3 of the Settlement Agreement on Recreation and Aesthetics, include: (1) guided tours of the Ross and Diablo Hydroelectric facilities; (2) operation of the tugboat/ferry service on Diablo Lake; (3) operation of a visitor contact station in Newhalem; (4) maintenance of picnic facilities available for public use in Newhalem and Diablo; (5) maintenance of the Ladder Creek Falls trail near the Gorge powerhouse; and (6) repair or replacement of the underwater electric cable for the campground at Colonial Lake on Diablo Lake.

Mitigative measures shall, in accordance with Section 3.4 of the Settlement Agreement on Recreation and Aesthetics, include: (1) funding of modification of boat access facilities at the Hozomeen Boat Ramp to provide adequate access to Ross Lake, up to a maximum of \$150,000; (2) funding of modification or replacement of selected docks along Ross Lake, up to a maximum of \$308,000; (3) funding of modification of facilities at the Gorge Lake Boat Ramp, up to a maximum of \$150,000; and (4) funding of modification of facilities at the Colonial Creek Boat Ramp, up to a maximum of \$125,000.

Enhancement measures shall, in accordance with Section 3.5 of the Settlement Agreement on Recreation and Aesthetics, include: (1) remodeling or replacing the Newhalem Visitor Contact Station; (2) funding the initial site redevelopment of the Goodell Creek Raft Access Site, up to a maximum of \$65,000; (3) funding the improvements to the Damnation Creek Boat-in Picnic Site, up to a

maximum of \$25,000; (4) contributions for improvements to the U.S. portion of the Hozomeen Water Distribution System, up to a maximum of \$50,000; (5) funding the initial development of the North Cascades Environmental Learning Center and contribute to its long-term operation and maintenance; (6) funding improvements to the Gorge Creek overlook, up to a maximum of \$175,000; (7) funding improvements to the Thunder Lake Fishing Facility up to a maximum of \$200,000; (8) funding improvements to the Thunder Knob Trail and funding the development of a new loop trail system around the top of Thunder Knob, above the south side of Diablo Lake, up to a maximum of \$210,000; (9) funding development of the Happy Flats-Panther Creek Trail, up to a maximum of \$155,000; (10) funding construction of the Desolation-Hozomeen Trail, up to a maximum of \$275,000; (11) funding of new interpretive facilities, up to a maximum of \$150,000 to be spent on facilities in the Ross Lake National Recreation Area; (12) funding a bicycle facility needs assessment and for capital facilities to implement the study, up to a maximum of \$175,000; (13) administering recreation utilization and needs assessments, up to a maximum of \$125,000; (14) funding new capital facilities identified by the recreation needs assessments, up to a maximum of \$312,500; and (15) funding ongoing operation and maintenance costs of recreation facilities within the Ross Lake National Recreation Area for the first fifteen years of the new license term, up to a maximum of \$60,000 per year; from the sixteenth through the twenty-fifth years of the new license term, up to a maximum amount of \$80,000 per year; for the next five years, up to a maximum of \$100,000 per year.

The Licensee shall prepare the Project Recreation Plan after consultation with the National Park Service; U.S. Forest Service; Upper Skagit Tribe, Sauk-Suiattle Tribe, and Swinomish Indian Tribal Community; and North Cascades Conservation Council. The Licensee shall allow a minimum of 30 days for these entities to comment and to make recommendations on the Project Recreation Plan before filing it with the Commission. The Licensee shall include in its filing documentation of such consultation including copies of the comments and recommendations on the proposed plan received during the consultation. Further, the Licensee should identify in its filing how the comments or recommendations are accommodated by the proposed plan. If the Licensee does not adopt a recommendation of a consulted entity, the filing shall include the Licensee's reasons, based on project specific information. The Commission reserves the right to require changes to the Project Recreation Plan. Upon Commission approval, the Licensee shall implement the Project Recreation Plan, including any changes required by the Commission. The Commission reserves the right, after notice and opportunity for hearing to modify this funding and contribution arrangement, including ordering a suspension or cessation of contributions and expenditures, should it be necessary or appropriate.

Article 413. Within 180 days of license issuance, the Licensee shall file for Commission approval a Project Visual Quality Plan implementing the following provisions of the Settlement Agreement on Recreation and Aesthetics and the Report on Aesthetics filed by the Licensee on April 30, 1991. The Project Visual Quality Plan shall, in accordance with Section 4.2 of the Settlement Agreement on Recreation and Aesthetics, include at a minimum implementation schedules, descriptions and provisions for required funding mechanisms for the following: (1) filling the Ross Lake reservoir as early as possible after April 15 and keeping it full through the Labor Day weekend consistent with other resource management constraints; (2) painting project transmission line towers a less visually contrasting color; (3) painting the two surge tanks above the Diablo and Gorge powerhouses a less visually contrasting color; (4) painting the structural steel bridge on the Gorge Dam access road bridge a less visually contrasting color; (5) redesigning or modifying the Ross Dam Broome Gate Shed to decrease its contrast; (6) removing the Diablo person lift; (7) providing high angle cut-off shielding for all exterior lighting and/or replace the mercury or low intensity sodium exterior lamps with high-intensity sodium lamps at the three powerhouses to the extent consistent with safe project operations; (8) replacing shiny, high contrast or reflective galvanized or aluminum roofing/siding on buildings in Newhalem and Diablo with more visually compatible material; (9) avoiding increasing the contrast of existing project facilities; (10) improving the visual quality of Newhalem and Diablo towns; (11) improving the visual quality of Engineering Row in Newhalem, including removal of three storage buildings; (12) developing a new greenhouse for the project across from Engineering Row; (13) developing a parking area on SR 20 within the town of Newhalem; (14) providing adequate parking for employees and visitors at the powerhouse and at the Ladder Creek Falls Trail; (15) improving the visual quality of the Town of Diablo and the Diablo Visitor Center; (16) maintaining project rights-of-way (ROW) for visual quality purposes; and (17) applying a range of vegetation management prescriptions to reduce the visual impacts of project rights-of-way.

The Licensee shall prepare the Project Visual Quality Plan after consultation with the National Park Service; U.S. Forest Service; Upper Skagit Tribe, Sauk-Suiattle Tribe, and Swinomish Indian Tribal Community; and North Cascades Conservation Council. The Licensee shall allow a minimum of 30 days for these entities to comment and to make recommendations on the Project Visual Quality Plan before filing it with the Commission. The Licensee shall include in its filing documentation of such consultation including copies of the comments and recommendations on the proposed plan received during the consultation. Further, the Licensee should identify in its filing how the comments or recommendations are accommodated by the proposed plan. If the

Licensee does not adopt a recommendation of a consulted entity, the filing shall include the Licensee's reasons, based on project specific information. The Commission reserves the right to require changes to the Project Visual Quality Plan. Upon Commission approval, the Licensee shall implement the Project Visual Quality Plan, including any changes required by the Commission.

Article 414. The Licensee shall implement the provisions of the Memorandum of Agreement By and Among the Federal Energy Regulatory Commission; the Washington State Historic Preservation Officer; the Advisory Council on Historic Preservation; the U.S. Federally Recognized Sauk-Suiattle Tribe, the Swinomish Tribal Community, and the Upper Skagit Tribe; the Nlaka'pamux Nation; and the City of Seattle Regarding the Skagit River Hydroelectric Project and the provisions of the Memorandum of Agreement By and Among the Federal Energy Regulatory Commission; the Washington State Historic Preservation Officer; the Advisory Council on Historic Preservation; the U.S. Department of the Interior, National Park Service; the U.S. Federally Recognized Sauk-Suiattle Tribe, the Swinomish Tribal Community, and the Upper Skagit Tribe; and the City of Seattle Regarding the Skagit River Hydroelectric Project.

The Licensee shall provide \$1,817,000 for the duration of the license as called for in the agreement regarding archaeological and historic resources, \$1,316,669 as called for in the agreements with the Upper Skagit Tribe, the Swinomish Indian Tribal Community, and the Sauk-Suiattle Tribe regarding traditional Cultural Properties, and \$600,000 as called for in the agreement with the Nlaka'pamux Nation. These dollar amounts are expressed in 1990 dollars and shall be adjusted annually, in the year of payment, for changes in the Consumer Price Index for All Urban Consumers as published by the U.S. Department of Labor for the Seattle metropolitan area. The Commission reserves the right, after notice and opportunity for hearing to modify this funding and contribution arrangement, including ordering a suspension or cessation of contributions and expenditures, should it be necessary or appropriate.

Article 415. Within 90 days of license issuance, or before October 1 of each year for the following year, in accordance with the articles of this license and the Commission's Uniform System of Accounts, the Licensee shall file a Project Expenditures Plan for Commission approval which shows the amounts of money the Licensee will spend or contribute pursuant to the license funding provisions and all expenses to be paid from these funds for the following year, including funds provided to other federal and state agencies. The Commission reserves the right to require changes in the Project Expenditures Plan. Upon Commission approval, the Licensee shall implement the Project Expenditures Plan, including any changes required by the Commission.

The Licensee shall also file with the Commission an annual statement on or before April 1 of each year for the previous calendar year, in accordance with the Commission's Uniform System of Accounts, showing the amounts of money the Licensee has spent or contributed pursuant to the license funding provisions and all expenses paid from these funds, including funds provided to federal and state agencies. The filing should also include signed statements from the signatory agencies of monies received from the Licensee pursuant to the license funding provisions all expenses paid from these funds. These statements shall be in sufficient detail to show whether the monies have been contributed and spent on the approved purposes.

Article 416. Within 90 days of license issuance, the Licensee shall file for Commission approval revised Exhibits F and K, including a showing of the acreage of federal lands within the project boundary and any off-site project islands required by this license.

(E) The Licensee shall serve copies of any Commission filing required by this order on any entity specified in this order to be consulted on matters related to that filing. Proof of service on these entities must accompany the filing with the Commission.

(F) The proceedings in Docket No. EL78-36 are terminated.

(G) The motion to intervene filed by the Sto:Lo Nation on February 24, 1995, is denied.

(H) This order is final unless a request for rehearing is filed within 30 days of the date of issuance of this order, pursuant to Section 313 of the FPA. The filing of a request for rehearing does not operate as a stay of the effective date of this order or of any other date specified in this order, except as specifically ordered by the Commission. The Licensee's failure to file a request for rehearing shall constitute acceptance of this order.

By the Commission.

(S E A L)

Lois D. Cashell,
Secretary.

SKAGIT RIVER HYDROELECTRIC PROJECT

FERC No. 553

OFFER OF SETTLEMENT

BEFORE THE
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

APRIL 1991

8/3/93

Signed copies of Wildlife & Fisheries agreement
in FERC files (currently in Hal's blue file)

Unsigned copies of above in my bookcase

D Hudd

**BEFORE THE
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

City of Seattle, Skagit River)
Hydroelectric Project)
No. 553)

Project No. 553

Docket No. EL 78-36

OFFER OF SETTLEMENT

In accordance with Rule 602 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure, 18 C.F.R. Section 385.602, the City of Seattle, City Light Department (City or Applicant); the U.S. Department of the Interior, National Park Service (NPS), Fish and Wildlife Service (FWS) and Bureau of Indian Affairs (BIA); the U.S. Department of Agriculture, Forest Service (USFS); the U.S. Department of Commerce, National Marine Fisheries Service (NMFS); the Upper Skagit Tribe, Sauk-Suiattle Tribe, and Swinomish Indian Tribal Community (Tribes); the Washington Department of Fisheries (WDF); the Washington Department of Wildlife (WDW); and the North Cascades Conservation Council (NCCC) (collectively referred to as the "Intervenors" or "Parties" when acting jointly with the City) hereby submit this Offer of Settlement for the City's Skagit River Hydroelectric Project No. 553 (Project).

The Offer of Settlement summarizes the terms and provisions of the Settlement Agreements between the City and the Intervenors in the following subject areas: Fisheries; Wildlife; Recreation and Aesthetics; Erosion Control; Cultural Resources (Archaeological and Historic Resources); and Traditional Cultural Properties.

These Settlement Agreements resolve all issues for the period specified in each agreement, related to the effects of the Project, as currently constructed, upon the subject areas identified above. The Parties intend that the Settlement Agreements shall remain in effect for the duration of the term of the new license period for the Project, including the term(s) of any annual license(s) issued thereafter. However, certain specific provisions contained in these Agreements have been negotiated based upon an assumed 30-year license period. If the FERC issues a license for longer

than a 30-year period, the Parties have agreed in making this Offer of Settlement that it shall give rise to a right of the Parties to initiate a proceeding before the FERC between the 25th and 30th year of the license to reopen the provisions which were specifically based upon a 30-year license period. The City agrees that it shall not oppose initiation of such a proceeding; the Parties, may, however, differ in their respective positions in such a proceeding.

The Parties request that the FERC approve the terms and provisions of the Settlement Agreements and dismiss the proceedings under Docket No. EL 78-36, pursuant to Rule 602, upon certification by the Chief Administrative Law Judge, as appropriate.

The Parties have agreed that each Settlement Agreement shall constitute a unit. The Parties also request that the FERC accept and approve the Settlement Agreements as a package. Any material modification of the terms of a Settlement Agreement, approval of less than the entire Agreement, or the addition of any material terms to a Settlement Agreement will make the Agreement voidable at the option of any Party. The City and the other Parties reserve the right to appeal the issuance of a license if unacceptable provisions are added.

I. EXPLANATORY STATEMENT

A. FACTUAL AND PROCEDURAL BACKGROUND

1. Introduction

The City of Seattle is the licensee for the Skagit River Hydroelectric Project (FERC No. 553), which is located on the Skagit River in Whatcom County, Washington. The Project includes the Gorge, Diablo, and Ross dams and associated facilities and transmission lines within the Project area in Whatcom, Skagit and Snohomish counties. The three dams currently provide the City with a significant generating capacity and supply approximately a quarter of the City's electrical power requirements. The Project also provides flood control storage, recreational opportunities, and downstream flow regulation including flow conditions for the protection of anadromous fish.

2. Skagit Project History

The City was issued a permit for the Gorge Diversion Dam by the Department of Agriculture in 1918, and the original timber crib structure was constructed between 1919 and 1924. In 1927, the Federal Power Commission (FPC) issued the City a license to construct and

operate Diablo Dam. Diablo, a concrete arch dam, was constructed between 1927 and 1929. It has been in operation since 1936. Originally referred to as Ruby Dam, Ross Dam was constructed in several stages between 1937 and 1967. Gorge Diversion Dam was reconstructed in concrete in 1950. The new Gorge High Dam, a concrete arch and gravity structure, was constructed slightly downstream of the diversion dam in 1961.

3. Procedural and Factual Developments

a. Relicensing

The City's license to operate the three dams expired in 1977, at which time the City filed an application for a new license with the FPC. A revised application was filed in 1978 and was accepted and noticed by the FPC in early 1979. Several state and federal agencies, Indian Tribes, and an environmental group moved to intervene and were granted intervenor status by the FPC. Since the filing of the application, the FPC and its successor, the FERC, has issued the City annually renewed licenses, and has required the City to consider the relevant issues with the intervening parties and to conduct studies necessary to the resolution of identified issues.

After reviewing the City's application for some period, the FERC directed the City, in an Additional Information Request dated October 31, 1988, to provide additional data, conduct additional studies, and submit several updated mitigation and enhancement plans for various environmental resources.

On October 31, 1989, the City responded to the FERC's information request by submitting the results of extensive studies and new data for the various resources, together with the comments of the Intervenor and the City's responses to those comments. This information was accepted by the FERC on January 10, 1990, at which time the City was given until November 30, 1990 to submit its final resource plans.

Over the past eleven years, the Parties have been involved in studies and negotiations related to the Project's effect upon the fish, wildlife, recreational and aesthetic, historic and cultural resources, and erosion control in the Project Area and vicinity. These negotiations were greatly intensified over the past three years in an effort to bring this matter to closure via settlement agreements between the Parties. On November 20, 1990, the Parties jointly submitted a request to the FERC to allow the Parties additional time to negotiate final settlement agreements. On December 3, 1990, the FERC granted the Parties' request, and set May 1, 1991 as the final date that the FERC would accept a submittal. The Parties successfully concluded negotiations in

March, 1991, and the final settlement agreements were circulated for signature by the parties shortly thereafter.

b. Instream Flow Proceeding

In response to petitions filed by several agencies and tribes on September 7, 1978, the FPC issued an order under Article 37 of the Project's license which directed the commencement of proceedings to examine the effects of the Project's flow regime on the Skagit River's fisheries resource (Docket No. EL 78-36).

In July of 1979, the parties to the flow amendment proceeding entered into negotiations to resolve issues relating to the Project's effect upon Skagit River flow levels and flow fluctuations and the anadromous fish resource.

After many months, the interested parties executed an interim agreement in Docket No. EL 78-36, which established certain flow regimes for the Skagit Project and required the City to perform further fishery studies. As modified, the interim agreement was to remain in force and effect until a permanent resolution to all outstanding issues was reached by the Parties. The interim agreement was approved by the FERC on May 12, 1981.

c. License Modification (High Ross)

The City in 1970 filed an application for amendment of the Project license to permit raising of Ross Dam. The FPC approved the license amendment in 1977, issuing its final order in 1978. Following judicial review, dispute resolution was pursued through the auspices of the International Joint Commission. Subsequently, a 1984 Treaty between the United States and Canada substituted a power supply arrangement between the Province of British Columbia in lieu of actual construction of High Ross. This solution has worked well, but if British Columbia should discontinue power deliveries, the City may pursue construction of High Ross. The Parties have agreed that the Agreements do not address mitigation in the event that the High Ross articles in the license are implemented. The Agreements provide a process for consideration of studies and mitigation for High Ross should the City proceed with their implementation. Further, no Party is precluded from asserting a challenge to High Ross construction.

II. THE SETTLEMENT AGREEMENTS

A. THE PARTIES

The Parties to the following Settlement Agreements are the same Parties that have submitted this Offer of Settlement.

B. PROVISIONS APPLICABLE TO ALL AGREEMENTS

1. General Provisions

The attached Settlement Agreements on fisheries, wildlife, recreation and aesthetics, erosion control, cultural resources and traditional cultural properties all contain similar generally applicable provisions. These general provisions include:

- **Statements of purpose and intent.** It is the intent of the Parties that all issues concerning environmental impacts from the relicensing of the Project, as currently constructed, are satisfactorily resolved by these Agreements.
- **Obligations of the Parties.** The City commits itself to implementation of the terms of the various Agreements. The Intervenor is committed to support a new Project license incorporating the provisions of the various Agreements, to support reasonable efforts to expedite the related NEPA process, and to file comments supporting the measures defined by the Settlement Agreements as the preferred action for the purpose of the Project's EA or EIS. The Parties are committed to cooperating in the implementation of the Agreements, including the submittal of this agreed upon Offer of Settlement. The Parties agree to cooperate in conducting and participating in studies and other actions provided for in the Agreements and to provide assistance in obtaining any approvals or permits which may be required for the implementation of the Agreements.
- **Effective date and duration.** The Agreements take effect upon the effective date of the license issued by FERC consistent with the Agreements and remain in effect through the new license period and the term of any subsequent annual licenses. The Agreements have a uniform provision for reopening and reconsideration of the substantive terms in the event of changed circumstances.

- **Monetary issues and implementation.** Monies to be expended by the City under the Agreements are to be adjusted for inflation pursuant to a uniform procedure. The City will facilitate annual meetings among all Parties to discuss implementation issues relative to all Project mitigation and enhancement plans. These meetings will provide a forum for resolution of inter-plan implementation issues.

- **Dispute resolution.** Each Agreement has a dispute resolution procedure. The procedure for each has slight variations, depending upon the number of Parties involved, and the scope of issues to be considered. The procedure in each Agreement provides for final recourse to the FERC.

2. Gorge Bypass Reach

The Parties have agreed that the Agreements obviate the need for flows in the Gorge bypass reach for each of the resources covered by the Agreements. Further, the Intervenor agree to support the City's efforts to retain its existing water quality certificate for the Gorge bypass reach or to obtain a new certificate from the State of Washington, Department of Ecology.

3. Ross Lake Level Operations

The Parties have agreed on an operational scheme for Ross Lake. The City will fill the lake as early as possible after April 15 each year and maintain full pool through Labor Day weekend, subject to the provisions of the Agreements, particularly the Anadromous Fish Flow Plan.

C. FISHERIES SETTLEMENT AGREEMENT

1. General Intent

The Fisheries Settlement Agreement between the City and various Parties is intended to resolve all issues related to the effects on fisheries resources of the Project, as currently constructed, for the period of May 12, 1981 (FERC approval date of the Interim Agreement), through the duration of the Settlement Agreement. It consists of the Anadromous Fish Flow Plan (Flow Plan), and the Anadromous and Resident Fish Non-Flow Plan (Non-Flow Plan). For each plan, coordinating committees are established to provide general oversight and direction concerning plan implementation. In addition, the City agrees to establish a new environmental staff position dedicated primarily to this purpose.

2. Plan Elements

The Flow Plan addresses flows for the fishery resources in the mainstem Skagit River downstream of Gorge Powerhouse. Its primary purpose is to mitigate the effects of Project operations on salmon and steelhead. During spawning periods and subsequent incubation of eggs and alevins (pre-emergent fry), the effects of Project operations are addressed by limiting maximum flows during spawning, shaping daily flows for uniformity throughout the spawning period, and maintaining minimum flows through the incubation period that are adequate to keep most redds (spawning nests) covered until fry emerge from the gravel. For newly emerged fry, the effects of Project operations are addressed by limiting daily downramp amplitude, maintaining minimum flows throughout the fry protection period that are adequate to cover areas of gravel bar commonly inhabited by fry, and limiting downramping to various rates and time periods depending on the amount of Project discharge to minimize or prevent fry stranding.

Specific sections of the Flow Plan include: (1) provisions to regulate salmon and steelhead spawning and incubation flows for the purpose of protecting spawning redds and offspring; (2) provisions for minimum flows, and daily and seasonal flow fluctuations for the purpose of protecting salmon and steelhead fry; (3) conditions under which the City may have reduced minimum flow requirements; (4) circumstances under which the City has limited flow control, (5) operating considerations for implementing provisions of the Flow Plan; (6) provisions for field monitoring to determine the accuracy of various models, and to determine alternative spawning and fry protection periods; and (7) compliance requirements that include flow monitoring and recording, and the preparation by the City of semi-annual compliance reports.

Even with complete implementation of the Flow Plan, some level of impacts will continue to occur because of daily flow changes that are not common in the natural environment. In addition, the configuration and operation of the Project has rendered some formerly productive fish habitat inaccessible. The Non-Flow Plan is specifically intended to address these residual impacts and habitat losses and, possibly, to provide a measure of improvement. It establishes the City's commitment to provide a total of \$6,320,000 for support and implementation of the following programs: (1) steelhead production; (2) chinook salmon research; (3) off-channel chum salmon habitat development and improvement; (4) creation of additional off-channel salmon spawning and rearing habitat at the existing County Line and Newhalem Ponds; (5) instream or off-channel habitat improvement and sediment reduction measures on the Skagit Wild and Scenic River or its tributaries; and (6) resident trout protection and production to include: (a) removal of transitory tributary migration barriers in Ross, Diablo, and Gorge reservoirs, and (b) captive broodstock

supplementation designated for the Skagit River and its tributaries above Gorge Dam with special emphasis on Gorge and Diablo reservoirs.

D. WILDLIFE SETTLEMENT AGREEMENT

1. General Intent

The Wildlife Settlement Agreement between the City and various Parties is intended to resolve all issues related to the effects on wildlife resources of the Project, as currently constructed, for the period of October 28, 1977 (expiration of the previous license) through the duration of the Settlement Agreement. The Settlement Agreement incorporates the Wildlife Habitat Protection and Management Plan. The Wildlife Management Review Committee is established to provide general oversight and direction concerning plan implementation. In addition, the City agrees to establish a new environmental staff position at least partly dedicated to wildlife purposes.

2. Plan Elements

The City will make available a total amount of \$17,000,000 from which both the acquisition of wildlife habitat lands and habitat enhancement will be funded. The large majority of the money will be used to acquire property rights (preferably in fee simple) in order to preserve wildlife habitat in the upper Skagit River and South Fork Nooksack River valleys. Lands have been selected that possess riparian areas and corridors, wetlands, and mature forest communities; have eagle usage or provide elk winter range; and/or are adjacent to other protected lands. The City will begin to secure some of the identified lands in advance of the receipt of the new license. The City will implement a continuing program to retain some of the acquired lands in the Nooksack basin in early successional stages in order to provide winter forage for elk. Some low-intensity habitat enhancement and manipulation measures may also be employed (e.g., wetland habitat restoration) in several locations. The Agreement establishes the procedures by which monies are allocated and lands are selected and acquired.

The City will provide continuing support during the term of the new license to interagency wildlife and ecosystems research and monitoring efforts in the North Cascades with emphasis on research that will enhance the knowledge and practice of wildlife protection and management in the Project Area and Ross Lake National Recreation Area. In support of this mission, the City will make an annual payment of \$50,000 for the purpose of funding wildlife and environmental research and studies. A five member Wildlife Research Advisory Committee will solicit and

review the research proposals and select the projects for funding. The City will make an annual payment of \$20,000 to support the long-term monitoring of wildlife and environmental resources in the North Cascades National Park Service Complex. The City will also fund the inventory and monitoring of bald eagle activity and design and equip a North Cascades research facility in the Project Area.

As part of the City's support of the North Cascades Environmental Learning Center (see the Recreation and Aesthetics section), an annual payment of \$20,000 for the term of the license will be provided by the City to the Center to further the development of public knowledge and understanding of the values and issues in wildlife and ecosystems management and protection in the Project Area and the North Cascades Area.

A memorandum of understanding will provide the procedural framework for consultation with the National Park Service regarding management activities on the City's non-residential fee title lands in the Ross Lake National Recreation Area that are not part of the Project Area. The Settlement Agreement also describes the procedures by which the implementation of the Plan will be periodically reviewed, and establishes a Wildlife Management Review Committee to provide this review and oversight.

The Intervenor agrees that the City's performance of the obligations detailed within the Agreement and Plan constitutes adequate wildlife resources protection and satisfactory mitigation for wildlife impacts caused by the Project, as currently constructed, for the period October 28, 1977 through the duration of this Agreement. The Intervenor agrees that such performance by the City will satisfy its obligations under the Federal Power Act, the Fish and Wildlife Coordination Act, and the Wild and Scenic River Act for purposes of relicensing of the Project. The Intervenor agrees to participate fully and in a timely manner in the conduct of the various technical, administrative, and decision-making activities, committees and procedures that are detailed in the Agreement and Plan.

E. CULTURAL RESOURCES (ARCHAEOLOGICAL AND HISTORIC RESOURCES) SETTLEMENT AGREEMENT

1. General Intent

The Settlement Agreement on Cultural Resources between the City, the National Park Service and the Tribes is intended to resolve all issues related to the effects of the Project, as

currently constructed on archaeological and historic resources for the period October 28, 1977 (expiration of the previous license) through the duration of the Settlement Agreement. The Settlement Agreement incorporates the City's Cultural Resources Mitigation and Management Plan, which includes both the Archaeological Resources Mitigation and Management Plan and the Historical Resources Mitigation and Management Plan. Procedures are established for the implementation and continuing oversight of the plans and measures and for consultation with the Washington State Historic Preservation Officer.

2. Plan Elements

The City will make available an estimated \$1,465,000 for the purpose of funding the archaeological measures and programs in the Settlement Agreement and Cultural Resources Plan. The monies for the archaeological measures are estimated amounts. The eligible resources will require mitigation; however, the choice of measures and methods to be used and the monetary amounts necessary for mitigation and management of the archaeological resources will be determined and negotiated by the Parties and the Washington State Historic Preservation Officer upon the completion of the field evaluations and testing of identified sites (tentatively in 2 to 3 years). The Archaeological Resources Plan will be completed no later than 1994. The cost estimates for archaeology are the best evaluation by archaeology professionals in the National Park Service of the likely results of the remaining field studies and the probable mitigation and management needs of the resources. Based on the actual results of the remaining field evaluations and the determinations by and negotiations between the Parties, the monies necessary to mitigate adverse impacts may be somewhat higher or lower than these estimates. Thus, these amounts are neither minimum nor maximum expenditure levels but rather are best estimates of the monies that will be needed to accomplish the mitigation of the final list of eligible archaeological resources.

The City will develop the Archaeological Resources Plan and its implementing Memorandum of Agreement—and future updates to the existing Memorandum of Agreement with the National Park Service—in cooperation with the National Park Service, the Washington State Historic Preservation Officer, the Upper Skagit Tribe, the Sauk-Suiattle Tribe, and the Swinomish Indian Tribal Community. The Plan will be developed so as to be consistent with tribal rights and to address their concerns. The Tribes will also be consulted and included in the development of archaeological study plans and in mitigation planning and implementation.

The City has already provided \$70,000 to the National Park Service for the purpose of inventorying, evaluating, and documenting the historic resources of the Project Area beyond the

normal documentation requirements. The City will make available an additional \$282,000 for the purpose of documenting, protecting, mitigating, and interpreting historic building and engineering resources in the Project Area, as described in the Historic Resources Mitigation and Management Plan that has been prepared by the City in consultation with the National Park Service and the Washington State Historic Preservation Officer.

The Historic Resources Plan defines a set of standards and procedures for the preservation and treatment of historic structures and resources at the Project. Categories of actions or activities that might affect the historic resources are defined and are tied back to the applicable standards and procedures.

A three-level procedure is established for the review and mitigation of activities (such as rehabilitation or alteration) that might affect historic resources. These levels correlate roughly with the level of intensity and size of the project, and integrate with the Capital Improvements Program (CIP) and other planning processes of the City.

The City will develop a set of Skagit Maintenance Guidelines to provide more detailed, resource- and task-specific guidance for the protection and maintenance of the historic resources. A computerized database will be developed to assist in the tracking and recording of activities and measures that are applied to these historic resources.

A cooperative program will be developed jointly by the City and the NPS for in-house training of City and NPS personnel in preservation techniques and to provide continuing information and assistance in these techniques and issues.

Historic Structure reports will be prepared by the City for two historic buildings in Newhalem for which either major rehabilitation or demolition are being considered, along with an historic landscape report for the Ladder Creek Gardens, for which rehabilitation activities may be proposed in the near future. An historic landscape assessment will also be prepared by the City for the grounds in Newhalem.

The City will develop several program measures and products to enhance the understanding and appreciation of the historic resources of the Area. Additional historic material will be integrated into the existing Skagit Tours program during the regular course of review and revision of this nationally recognized program. A self-guiding walking tour and brochure will be developed for the Newhalem area.

Four of the City's interpretive exhibits and displays in the Project Area will receive a comprehensive review and reassessment and will subsequently be revitalized. A new, fifth interpretive display will be developed by the City at the incline lift waiting station.

The City will produce, in conjunction with the National Park Service, one or more interpretive brochures which will use some of the documentation developed by the City and National Park Service. The City will also provide funding for the preservation of historic photographs which are in the keeping of the City's Engineering Department.

The City has concluded a Memorandum of Agreement with the Washington State Historic Preservation Officer (National Park Service concurring) which implements the Historic Resources Mitigation and Management Plan under the National Historic Preservation Act. A similar agreement will be concluded to implement the Archaeological Resources Plan once that plan has been developed.

The Intervenor agree that the City's performance of the obligations detailed within the Settlement Agreement and the Cultural Resources Plan constitutes adequate cultural resources protection and satisfactory mitigation for archaeological and historic resources impacts caused by the Project, as currently constructed, for the period October 28, 1977 through the duration of this Settlement Agreement. The Intervenor agree that such performance by the City will satisfy its obligations for historic and archaeological resources under the Federal Power Act and the National Historic Preservation Act (including Section 106) for purposes of relicensing of the Project.

The Intervenor agree to participate fully and in a timely manner in the conduct of the various technical, administrative, and decision-making activities, committees and procedures that are detailed in the Settlement Agreement and the Historic Resources Mitigation and Management Plan. The National Park Service will conduct and complete the archaeological field studies and evaluations under the existing Memorandum of Agreement with the City to provide archaeological and historic survey and evaluation services and expertise. The National Park Service and the City will jointly plan and fund a seminar series on historic preservation topics as described in the Settlement Agreement and the Historic Resources Mitigation and Management Plan.

F. RECREATION AND AESTHETICS SETTLEMENT AGREEMENT

1. General Intent

The Settlement Agreement on Recreation and Aesthetics (Visual Quality) is intended to resolve all issues related to the effects on recreation and visual quality by the Project, as currently constructed, for the period October 28, 1977 through the duration of the Settlement Agreement. The Settlement Agreement includes a Recreation Plan and a Visual Quality Mitigation Plan. A separate Memorandum of Agreement (MOA) is entered into by the City, the National Park Service, and the North Cascades Institute (not a party to these proceedings) regarding the single largest element of the recreation plan, the North Cascades Environmental Learning Center. The Settlement Agreement establishes implementation procedures for both plans. In addition, the City will support implementation by dedicating part of the time of a new professional staff person to implement the plans.

2. Plan Elements

Under the Settlement Agreement, the City has agreed to carry out numerous measures at the Project intended to mitigate and enhance recreational opportunities and the visual quality of Project facilities. The following briefly summarizes the specific measures in the two plans:

a. Recreation Plan

The Recreation Plan provides that the City will fund a number of measures in the Project area to mitigate for the adverse impacts of reservoir level variations and to enhance recreational opportunities elsewhere in the Ross Lake National Recreation Area and on the Skagit Wild and Scenic River.

The total cost of the Skagit Project Recreation Plan is approximately \$17,000,000 over the term of the license, in 1990 dollars.

Continuing measures

The Recreation Plan provides for the City to continue providing a number of recreational opportunities and services in the Project Area.

These include:

- Conducting Skagit Tours, serving 10,000 persons per year;
- Operating the Newhalem visitor contact station, including rehabilitation of the facility, serving thousands of visitors each year;
- Operating Diablo Lake tugboat/ferry service, providing access to Ross Lake and Ross Lake Resort for hundreds of persons per year, including many with canoes and other small boats to be portaged to Ross Lake;
- Maintaining picnic and playground facilities open to the public in Newhalem and Diablo;
- Maintaining the Ladder Creek Falls trail behind the Gorge powerhouse; and
- Maintaining and replacing, if necessary, the electric supply cable to Colonial Creek campground on Diablo Lake.

The City will also continue to meet its obligations under the Treaty between the United States and Canada. This Treaty provides in part for the City to make monetary contributions for recreation purposes in the Project Area through the Skagit Environmental Endowment Commission.

Mitigation measures

The City will fund a number of measures to mitigate for the impacts of Project operations on recreation facilities on the Project reservoirs—Ross, Diablo, and Gorge Lakes. These measures include:

- Increasing the ability of boaters to access Ross Lake at Hozomeen by extension of the ramps to a lower elevation;
- Increasing accessibility of Ross Lake boat-in campgrounds by improvement of their docks; and
- Improving accessibility of Diablo and Gorge Lakes by improvements of boat ramp facilities on each reservoir.

The Plan allocates \$733,000 of City funds for these measures.

Enhancement measures—initial funding

The most significant new recreational facility to be funded by the City under the Plan is a North Cascades Environmental Learning Center (Learning Center) proposed for either Diablo Lake (the preferred site) or a site next to the National Park Service Visitor Center. The Learning Center will have an initial overnight capacity of 40 students and 12 faculty and designed for expansion to an overnight capacity of 60 students and 18 faculty. The Learning Center will be built by the City on federal land and initially operated by the North Cascades Institute, a non-profit educational organization, under the guidance of an oversight committee consisting of representatives of the City, the National Park Service and the operator. The City and the National Park Service will cooperate in support of Learning Center operations; the City, by providing substantial ongoing program support funding, and the National Park Service, by provision of sewer and water utilities and other support.

The City will also fund all or part of a number of other recreational facilities, and related infrastructure, both improvements and new construction. These facilities include:

- Interpretive facilities
- Goodell Creek raft access site
- Damnation Creek boat-in picnic site
- Marblemount boat access site
- Hozomeen area water supply system
- Gorge Creek overlook
- Thunder Lake handicap access fishing site
- Thunder Knob trail
- Happy Flats—Panther Creek trail
- Desolation—Hozomeen trail
- Black Peak overlook and rest area
- Steelhead county park
- Lower Sauk River boat access site
- Suiattle River boat access site
- Rocky Creek River access site

All of the foregoing measures are scheduled to begin by year seven of the new license period. The interpretive facilities are funded at five year intervals throughout the new license

period. The Plan provides for expenditures by the City of over \$11,000,000 to implement these measures; \$9,000,000 of that amount is for the Learning Center.

Enhancement measures—ongoing studies and funding

In order to provide for growth of recreational use of the Project area the City will provide funding throughout the new license period to address new recreation needs. These measures include:

- Recreation use and needs assessments every five years;
- Bicycle use and needs assessment;
- Capital funding of implementation of the needs identified through the assessments in consultation with National Park Service and the U.S. Forest Service, as appropriate; and
- Recreation facilities operation and maintenance support for National Park Service and U.S. Forest Service throughout the new license period.

b. Visual Quality Mitigation Plan

The Visual Quality Mitigation Plan provides for improvements of the visual quality of Project facilities. The main areas of concern were Project structures near the three dams, and the transmission line rights-of-way extending from the Project Area into Snohomish County.

The City estimates the total cost of the Skagit Project Visual Mitigation Plan at approximately \$7,500,000 over the term of the license, in 1990 dollars.

Mitigation measures

The City will undertake measures to mitigate for Project impacts on visual quality in the Project area. These measures include:

- Repainting of various Project facilities in less visually contrasting colors on the normal maintenance cycle, such as transmission towers, surge tanks, and the Gorge Dam Access Bridge;
- Removal of the Diablo person lift; and
- Modification of the Ross Dam Broom Gate Shed to decrease its contrast.

Enhancement measures—initial funding

Funding from the Erosion, Wildlife and Visual Quality (Aesthetics) Agreements will go toward the development of a new, larger greenhouse facility at the Project. The increased need for propagation of native plants called for by various measures in these three Agreements led to the need for such a facility.

Other Visual Quality Mitigation Plan elements to be undertaken by the City include:

- Revegetation and landscaping of a former housing area in Newhalem, including a river view trail and picnic facilities;
- Paving and landscaping of a parking area in Newhalem for use by Recreational Vehicles;
- Improvement of the Ladder Creek Falls Trail Parking Area in Newhalem by paving and revegetation;
- Landscaping to increase the screening of the Gorge switchyard; and
- Refill of Ross Lake as early as possible after April 15, in the recreation season consistent with other resource management constraints.

Enhancement measures—ongoing measures

The Project transmission lines and their attendant rights-of-way are addressed in the Rights-of-Way Vegetation Management Plan, which is a section of the Visual Quality Mitigation Plan. The primary concern is the visibility of the transmission line features from State Route 20 and the Skagit Wild and Scenic River. The City will continue to improve the visual quality of the rights-of-way by vegetation management that permits greater growth than in the past and by giving special treatment to seven target areas identified in one of the visual quality assessment studies.

Other plans

Several Erosion Control Plan elements simultaneously mitigate visual quality impacts. Measures include planting vegetation and placing earth and rock to discourage shoreline erosion. Similarly, a number of the Recreation Plan measures will improve the visual quality of the Project area by improving landscaping and orienting travelers' views away from Project facilities.

G. EROSION CONTROL SETTLEMENT AGREEMENT

1. General Intent

The Erosion Control Settlement Agreement between the City and the National Park Service is intended to resolve all issues related to the effects on soils and slope stability of the Project, as currently constructed, except for those erosion control requirements identified in the archaeological portion of the Settlement Agreement incorporating the Cultural Resources Mitigation and Management Plan for the period October 28, 1977 through the duration of the Erosion Control Settlement Agreement. It incorporates the Erosion Control Plan. Technical representatives of the City and the National Park Service will provide general oversight and direction concerning plan implementation. In addition, the City agrees to establish a new environmental staff position at least partly dedicated to erosion control purposes.

2. Plan Elements

As the licensee for the Project, the City has agreed to oversee the implementation of this Agreement. Jointly with the National Park Service, the City will, throughout the new license term, regularly evaluate previous erosion control work and update the work plan for erosion control work to be done in the subsequent years. The City will also construct greenhouse facilities and institute a plant propagation program to supply plant stock for vegetation at erosion control sites.

The National Park Service will have the lead role in most erosion control work and monitoring, primarily at reservoir shoreline sites. It will conduct its work after full consultation and agreement with the City. It will do the erosion control work at most of the sites identified in the Erosion Control Plan and at other sites identified in collaboration with the City during the new license term. The City will do much of the erosion control work at road sites in the Project area.

Erosion control will include passive and active measures. Passive measures will include monitoring of erosion rates and processes at sites where erosion control would be difficult because of a high potential for large mass slump movements of soils or where disturbance would be undesirable (e.g., osprey nesting trees). Active measures will be limited because of the wilderness setting of the Project, which precludes the use of large amounts of concrete, chemically treated lumber, or visually obtrusive structures. Active measures will include vegetation, logs, rock walls, and cribbing. Naturally occurring materials (local earth, rock, timber, and vegetation) that blend with the surrounding site features will be used to minimize the visual impacts of erosion control.

The City will provide funding for this Agreement as follows: (1) \$845,000 for erosion control work during the first nine years of the new license term at the sites specified in the Erosion Control Plan; (2) \$500,000 for erosion control measures at new sites, maintenance, and, if necessary, completion of work at the sites in the Erosion Control Plan; and (3) funding for the greenhouse facilities and the plant propagation program. The City will also fund erosion control at several high priority trail and campground sites up to a maximum of \$99,000 in the years before the new license is issued; interim expenditures will be deducted from erosion control obligations during the new license term.

H. TRADITIONAL CULTURAL PROPERTIES SETTLEMENT AGREEMENT

1. General Intent

Three substantively identical agreements are being executed by the City, one with each of the tribal intervenors. The three Traditional Cultural Properties Settlement Agreements are intended to resolve all mitigation issues related to Traditional Cultural Properties for the Project, as currently constructed, for the period October 28, 1977 through the duration of the Settlement Agreements. Included in each Settlement Agreement is a mitigation plan providing for further studies and monetary payments. The Settlement Agreements provide implementation procedures, including coordination among the three similar plans. In addition, the City will support implementation by dedicating part of the time of a new professional staff person to plan implementation.

2. Plan Elements

The Agreements provide for the City to fund studies to complete an inventory of traditional cultural properties in the Project Area, including Project impacts on these properties. The City will spend up to \$250,000 on this inventory, with possible additional contributions from the affected federal land management agencies, primarily the National Park Service.

The City will also fund cultural activities of the three Tribes in lieu of on-site mitigation measures. Over an eight-year period, each tribe will receive \$1,233,338 in 1990 dollars.

III. RELEVANT RECORD

The record in support of these Settlement Agreements consists of the entire record of this proceeding, including Docket No. EL 78-36. The Parties submit that the FERC should rely upon this record in assessing whether these Settlement Agreements are in the public interest.

IV. PROPOSED FERC ORDER

Pursuant to Rule 602, the Parties have attached a draft order approving the Settlement Agreements.

V. CONCLUSION

WHEREFORE, the Parties hereby request that the FERC approve the Settlement Agreements as submitted, and that, upon approval, the FERC conclude and terminate this proceeding, including Docket No. EL 78-36.

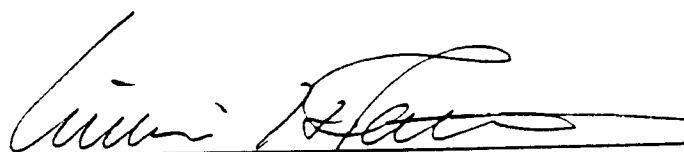
Respectively submitted,

Dated: April 25, 1991

THE CITY OF SEATTLE
MARK H. SIDRAN
City Attorney

ORIGINAL

By: _____



William H. Patton
Assistant City Attorney
Director, Utilities Division
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Dated: April 23, 1991

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U.S. DEPARTMENT OF INTERIOR;
NATIONAL PARK SERVICE, FISH AND WILDLIFE SERVICE,
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By: Susan K. Driver

Susan K. Driver
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Portland, OR 97232

Dated: April 17, 1991

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U.S. DEPARTMENT OF THE AGRICULTURE, FOREST SERVICE

By: _____

for John F. Butruille
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Pacific Northwest Region, USFS
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Portland, OR 97204

Dated: April 17, 1991

U.S. DEPARTMENT OF THE AGRICULTURE, FOREST SERVICE

By: 

John F. Butruille
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Dated: April 24, 1991

1991

UPPER SKAGIT TRIBE
SAUK-SUIATTLE TRIBE

By: 

Russell Busch
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Dated: April 24th, 1991

SWINOMISH INDIAN TRIBAL COMMUNITY

By: _____

Alan Olson
Attorney
Swinomish Indian Tribal Community
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LaConner, WA 98257

Dated: April 22nd, 1991

**WASHINGTON STATE DEPARTMENT OF FISHERIES
AND WASHINGTON STATE DEPARTMENT OF WILDLIFE**

By:



William C. Frymire
Assistant Attorney General
Office of Attorney General
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Olympia, WA 98504

Dated: April 24, 1991

NORTH CASCADES CONSERVATION COUNCIL

By: David Fluharty
David Fluharty
President, North Cascades Conservation Council
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University Station
Seattle, WA 98145-1980

Dated: April 16, 1991

NATIONAL MARINE FISHERIES SERVICE

By: F. Lorraine Bodi
F. Lorraine Bodi, Attorney
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National Marine Fisheries Service
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Seattle, WA 98115

**BEFORE THE
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

City of Seattle, Skagit River)
Hydroelectric Project)
No. 553)
_____)

Project No. 553

Docket No. EL 78-36

**DRAFT
ORDER APPROVING SETTLEMENT AGREEMENTS AND
DISMISSING PROCEEDINGS UNDER DOCKET NO. EL 78-36**

(Issued _____, 199__)

On April ____, 1991, the City of Seattle, City Light Department; the U.S. Department of the Interior, National Park Service, Fish and Wildlife Service, and Bureau of Indian Affairs; the U.S. Department of Commerce, National Marine Fisheries Service; the Upper Skagit Tribe, Sauk-Suiattle Tribe, and Swinomish Indian Tribal Community; the Washington Department of Fisheries; the Washington Department of Wildlife; and the North Cascades Conservation Council; collectively submitted to the Commission an Offer of Settlement. The Commission finds that the Settlement Agreements proposed in that Offer of Settlement are in the public interest and should be approved.

THE COMMISSION ORDERS:

(A) The Settlement Agreements listed below that were submitted with the Offer of Settlement on April ____, 1991 are hereby approved:

- (1) Fisheries Settlement Agreement, incorporating the Anadromous Fish Flow Plan and the Anadromous and Resident Fish Non-Flow Plan;
- (2) Settlement Agreement Concerning Wildlife, incorporating the Wildlife Habitat Protection and Management Plan;

(3) Settlement Agreement on Recreation and Aesthetics (including the Recreation Plan and Visual Quality Mitigation Plan);

(4) Settlement Agreement Concerning Erosion Control, incorporating the Erosion Control Plan;

(5) Settlement Agreement Concerning Cultural Resources (Archaeological and Historic Resources), incorporating the Cultural Resources Mitigation and Management Plan, which includes the historic and archaeological resources mitigation and management plans; and

(6) Settlement Agreement Concerning Traditional Cultural Properties.

(B) The proceedings under Docket No. EL 78-36 are hereby dismissed.

(C) The Commission's approval of the Settlement Agreements shall not constitute approval or precedent regarding any principle or issue in this or any other proceeding.

BY THE COMMISSION